A BILL FOR AN ACT

RELATING TO THE SALE OF TOBACCO PRODUCTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

SECTION 1. Section 712-1258, Hawaii Revised Statutes, is amended to read as follows:

"§712-1258 Tobacco products and electronic smoking devices; persons under twenty-one years of age. (1) It shall be unlawful to sell or furnish a tobacco product in any shape or form or an electronic smoking device to a person under twenty-one years of age.

(2) All persons engaged in the retail sale of tobacco products or electronic smoking devices shall check the identification of tobacco product or electronic smoking device purchasers to establish the age of the purchaser if the purchaser reasonably appears to be under twenty-seven years of age.

(3) It shall be an affirmative defense that the seller of a tobacco product or an electronic smoking device to a person under twenty-one years of age in violation of this section had requested, examined, and reasonably relied upon a
photographic identification from the person establishing that person's age as at least twenty-one years of age prior to selling the person a tobacco product or an electronic smoking device. The failure of a seller to request and examine photographic identification from a person under twenty-one years of age prior to the sale of a tobacco product or an electronic smoking device to the person shall be construed against the seller and form a conclusive basis for the seller's violation of this section.

(4) Signs using the statement, "The sale of tobacco products or electronic smoking devices to persons under 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.

(5) It shall be unlawful for a person under twenty-one years of age to purchase or possess any tobacco product or electronic smoking device, as those terms are defined in subsection (7). This provision does not apply if a person under the age of 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 persons under twenty-one years of
age.

(6) Any [person-who] retailer or permittee who violates
or whose employee violates subsection (1) or (4), or both,
shall be fined $500 for the first offense. Any subsequent
offenses shall subject the [person] retailer or permittee to a
fine not less than $500 nor more than $2,000. Any person
under twenty-one years of age who violates subsection (5)
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. Any
tobacco product or electronic smoking device, as those terms
are defined in subsection (7), in the person's possession at
the time of violation of subsection (5) shall be seized,
summarily forfeited to the State, and destroyed by law
enforcement following the conclusion of an administrative or
judicial proceeding finding that a violation of subsection (5)
has been committed. The procedures set forth in chapter 712A
shall not apply to this subsection.

(7) For the purposes of this section:

"Electronic smoking device" means any electronic product that can be used to 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.

"Permittee" means the holder of a retail tobacco permit in accordance with chapter 245."

"Retailer" means an entity that engages in the practice of selling cigarettes or tobacco products to consumers and includes the owner of a cigarette or tobacco product vending machine.

"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

SECTION 2. This Act does not affect rights and duties
that matured, penalties that were incurred, and proceedings
that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY:

BY REQUEST

JAN 22 2019
Report Title:
Electronic Smoking Devices

Description:
Clarifies that liability for illegally selling tobacco products to persons under 21 is borne by the retail entity or individual who holds a valid permit to sell tobacco products, as opposed to an employee.

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

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO THE SALE OF TOBACCO PRODUCTS.

PURPOSE: To provide clarity on selling tobacco products and electronic smoking devices to persons under twenty-one years of age.

MEANS: Amend section 712-1258, Hawaii Revised Statutes.

JUSTIFICATION: This measure specifies that retailers of tobacco products and retail tobacco permit holders are subject to penalty provisions for selling tobacco products and electronic smoking devices to persons under twenty-one years of age. Previous wording was ambiguous as to whether an employee or the business owner were liable.

Impact on the public: This measure will prevent youth and young adults from more easily obtaining tobacco products and electronic smoking devices at the critical age when nicotine consumption habits and addiction are frequently formed.

Impact on the department and other agencies: This proposal will make enforcement simpler because of the additional specificity.

GENERAL FUND: None.

OTHER FUNDS: None.

PPES PROGRAM DESIGNATION: HTH 590.

OTHER AFFECTED AGENCIES: Department of the Attorney General; County Law Enforcement Agencies.

EFFECTIVE DATE: Upon approval.