THE SENATE
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAII
S.B. NO. 1016
JAN 18 2019

A BILL FOR AN ACT

RELATING TO SALES OF TOBACCO.

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

SECTION 1. The legislature finds that the density of tobacco retailers around schools has a significant impact on the prevalence of youth tobacco use. A study published in the American Journal of Public Health showed that experimental smoking among high school-aged minors increases when tobacco retailers are closer to schools and densely populate those locations. Similarly, the incidence of smoking was significantly higher among students in schools with the highest density of surrounding tobacco retailers compared with students in schools without any tobacco retailers nearby. Another study found that tobacco retailers were more concentrated in school areas and more likely to be frequented by youth.

The legislature further finds that electronic smoking devices are especially popular among youth, surpassing cigarettes as the most commonly used tobacco product. The 2015 Hawaii Youth Risk Behaviors Survey found that twenty-five per cent of high school students and fifteen per cent of middle
school students reported using electronic vapor products in the thirty days preceding the survey. The popularity of these devices is concerning, as electronic smoking devices are not safe alternatives to other tobacco products, and exposure to nicotine increases the risk of addiction and may disrupt critical brain development.

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

The legislature notes its constitutional obligation to protect the public health and safety of the residents. In
particular, article IX, section 1, of the Hawaii State
Constitution directs that "[t]he State shall provide for the
protection and promotion of the public health." The legislature
finds that tobacco retail buffer zones encourage responsible
tobacco retailing, reduce tobacco-related health disparities,
and most importantly, reduce youth tobacco use, especially the
use of electronic smoking devices. Many cities in California
and New York have already implemented tobacco retail buffer
zones, ranging from three hundred to fifteen hundred feet,
around schools, parks, libraries, and other youth-oriented
areas, within which sales of tobacco products and permits for
tobacco retailers are prohibited.

The purpose of this Act is to:

(1) Reduce the use of, access to, and exposure to tobacco
products by youth by prohibiting the issuance and
renewal of retail tobacco permits for, and the sale of
a tobacco product or an electronic smoking device at,
a place of business within seven hundred fifty feet of
preschools, schools, and public playgrounds; and
(2) Codify the department of taxation's administrative rule specifying when the department may suspend, revoke, or decline to renew a retail tobacco permit.

SECTION 2. Chapter 245, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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

(1) Submitted a false or fraudulent application or intentionally provided a false statement in an application;

(2) Possessed or displayed a false or fraudulent license or retail tobacco permit;
(3) Failed to meet or maintain the conditions and requirements necessary to qualify for the granting of a license or retail tobacco permit;

(4) Procured a wholesaler or dealer license or retail tobacco permit through fraud, misrepresentation, or deceit;

(5) Aided and abetted a person or entity that does not possess a license or retail tobacco permit to directly or indirectly perform activities requiring a license or retail tobacco permit;

(6) Instances of noncompliance, violation, or conviction of any law directly pertaining to the sale, importation, acquisition, possession, stamping, distribution, transportation, or smuggling of cigarettes, counterfeit cigarettes, counterfeit tax stamps, or other tobacco products in violation of county, state, or federal law;

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

(8) Failed to comply with applicable tax obligations.

(b) In assessing whether good cause exists when
considering a revocation, suspension, or declination to renew a
retail tobacco permit based upon a person's or entity's
employee's violations of section 712-1258, the department may
consider whether the sale of the tobacco product to the minor
was an isolated incident, and if not, the extent to which the
person or entity acted in reckless disregard of the risk that
tobacco products would be sold to minors.

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

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

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

(3) Such other matters as justice may require or as the
department deems relevant.
(d) Revocation, suspension, or declination to renew a retail tobacco permit shall have no effect on liability for payment of taxes, fees, penalties, or interest incurred or imposed."

SECTION 3. Chapter 328J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§328J- Tobacco products and electronic smoking devices; prohibited locations. (a) It shall be unlawful to sell a tobacco product or an electronic smoking device at a place of business located within seven hundred fifty feet of a public or private preschool; a public or private elementary, intermediate, or high school; or public playground. The distance of seven hundred fifty feet shall be measured from the boundary of the preschool, school, or playground to the boundary of the place of business' premises.

(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.

"Public playground" means an area of land that is used for outdoor play or recreation, especially by children, maintained by county or state government, that contains one or more of the following:

(1) Pieces of recreational equipment such as a slide or a swing;

(2) Facilities for playing informal games such as a baseball diamond or tennis court; or

(3) Fields for playing of sports such as soccer or football.

Public or private beaches shall not be deemed public playgrounds.

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

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

SECTION 4. Section 245-2.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:
"(c) The retail tobacco permit shall be issued by the
department upon application by the retailer in the form and
manner prescribed by the department, and the payment of a fee of
$20[[-]; provided that the place of business for which the permit
is sought shall not be within seven hundred fifty feet of a
public or private preschool; a public or private elementary,
intermediate, or high school; or a public playground. Permits
shall be valid for one year, from December 1 to November 30, and
renewable annually[[-]; provided that the department shall not
renew a permit for a place of business that is located within
seven hundred fifty feet of a public or private preschool; a
public or private elementary, intermediate, or high school; or a
public playground. Whenever a retail tobacco permit is defaced,
destroyed, or lost, or the permittee relocates the permittee's
business, the department may issue a duplicate retail tobacco
permit to the permittee for a fee of $5 per copy. The distance
of seven hundred fifty feet shall be measured from the boundary
of the preschool, school, or public playground to the boundary
of the place of business' premises. Public or private beaches
shall not be deemed public playgrounds for purposes of this
subsection."
SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 7. This Act shall take effect on July 1, 2019; provided that section 2 shall take effect on January 1, 2020.

INTRODUCED BY:

[Signatures]
Report Title:
Tobacco; Electronic Smoking Devices; Tobacco Retailer Buffer Zones; Keiki Caucus

Description:
Prohibits the issuance of new retail tobacco permits and renewal of existing permits for places of business that are located within 750 feet of a preschool, school, or public playground. Prohibits the sale of tobacco products and electronic smoking devices by businesses that are located within 750 feet of a preschool, school, or public playground. Beginning on January 1, 2020, codifies the Department of Taxation's administrative rule specifying when the Department may suspend, revoke, or decline to renew a retail tobacco permit.

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