

HOUSE OF REPRESENTATIVES  
THIRTY-FIRST LEGISLATURE, 2022  
STATE OF HAWAII

**H.B. NO.** 1570  
H.D. 1

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# A BILL FOR AN ACT

RELATING TO THE YOUTH VAPING EPIDEMIC.

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



## PART I

SECTION 1. The purpose of this Act is to:

- (1) Require the department of health to post monthly updates on its website on all deposits into and expenditures from the tobacco enforcement special fund, Hawaii tobacco settlement special fund, and Hawaii tobacco prevention and control trust fund;
- (2) Require the department of health to submit annual reports to the legislature that provides an accounting of the receipts and expenditures from the Hawaii tobacco settlement special fund and Hawaii tobacco prevention and control trust fund;
- (3) Require the department of the attorney general to monitor all online sales of all tobacco products and electronic smoking device products and post monthly updates on its website regarding the estimated number of these products that have entered the State and how many products, by tonnage, have been confiscated;
- (4) Require the department of health to establish a standardized and scientific testing process for the presence of flavoring in all tobacco products and synthetic nicotine products and make the testing protocols and results available to the public;
- (5) Prohibit the sale or distribution of all flavored tobacco and synthetic nicotine products in the State;
- (6) Require the department of health, in collaboration with the department of education, to establish a take back program to collect and destroy all electronic smoking devices, flavored tobacco or synthetic nicotine products, and tobacco products voluntarily disposed of by students on school property; and
- (7) Require the department of health, in collaboration with the department of education, to establish quarterly meetings with students at all school complex areas and independent schools to seek input on addressing the youth vaping epidemic.

This Act shall be known and may be cited as the Reversing the Youth Vaping Epidemic Act of 2022.

## PART II

SECTION 2. Section 28-15, Hawaii Revised Statutes, is amended to read as follows:

**"§28-15 Tobacco enforcement special fund.** (a) There is established in the state treasury the tobacco enforcement special fund, into which shall be deposited the tobacco settlement moneys as provided by section 328L-2(a), the allocated portion of the

stamp fee designated to pay for the cost of enforcing the cigarette tax stamp as provided by section 245-26, and fines as provided for by section 245-41.

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

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

(c) All unencumbered and unexpended moneys in excess of \$500,000 remaining on balance in the tobacco enforcement special fund at the close of June 30 of each year shall lapse to the credit of the state general fund.

(d) The department of the attorney general shall submit a report to the legislature, no later than twenty days prior to the convening of each regular session, providing an accounting of the receipts and expenditures of the fund.

(e) The department of health shall post a monthly update on the department of health's website on the sources of moneys deposited into the fund and expenditures of the moneys in the fund."

SECTION 3. Section 328L-2, Hawaii Revised Statutes, is amended to read as follows:

**"§328L-2 Hawaii tobacco settlement special fund.** (a) There is established in the state treasury the Hawaii tobacco settlement special fund into which shall be deposited:

- (1) All tobacco settlement moneys; and
- (2) All interest and earnings accruing from the investment of moneys in the fund;

provided that of all tobacco settlement moneys received by the State each fiscal year, the sum representing the first \$350,000 of those moneys shall first be deposited in the state treasury in each fiscal year to the credit of the tobacco enforcement special fund. The Hawaii tobacco settlement special fund shall be administered by the department.

(b) The fund shall be used for the purpose of receiving, allocating, and appropriating the tobacco settlement moneys as follows:

- (1) Fifteen per cent shall be appropriated into the emergency and budget reserve fund under section 328L-3;
- (2) Twelve and one-half per cent shall be appropriated into the Hawaii tobacco prevention and control trust fund under section 328L-5;
- (3) Twenty-six per cent shall be appropriated into the university revenue-undertakings fund created in section 304A 2167.5, to be applied to the payment of the principal of and interest on, and to generate required coverage, if any, for, revenue bonds issued by the board of regents of the University of Hawaii to finance the cost of construction of a university health and wellness center, including a new medical school facility, to be situated on the island of Oahu; and
- (4) Any remaining amounts shall be deposited to the credit of the state general fund;

in the succeeding fiscal year.

(c) The department shall submit a report to the legislature, no later than twenty days prior to the convening of each regular

session, providing an accounting of the receipts and expenditures of the fund.

(d) The department shall post a monthly update on the department's website on the sources of moneys deposited into the fund and expenditures of the moneys in the fund."

SECTION 4. Section 328L-6, Hawaii Revised Statutes, is amended to read as follows:

"~~[†]~~**§328L-6**~~[†]~~ **Tobacco prevention and control advisory board.** (a) There is established a tobacco prevention and control advisory board under the department for administrative purposes.

(b) The tobacco prevention and control advisory board shall consist of members who are involved in tobacco prevention and control. Membership of the board shall be as follows:

- (1) One member of the governor's staff, appointed by the governor;
- (2) One member to be appointed by the governor from a list of two names submitted by the president of the senate;
- (3) One member to be appointed by the governor from a list of two names submitted by the speaker of the house of representatives;
- (4) The director or the director's designee;
- (5) The superintendent of education or the superintendent's designee;
- (6) Three members having demonstrated interest in and having backgrounds beneficial to controlling and preventing the use of tobacco, appointed by the director of health; and
- (7) Three members representing populations at risk for tobacco use, appointed by the governor.

(c) Members shall:

- (1) Be appointed or designated, as applicable, without regard to section 26-34;
- (2) Serve without compensation; and
- (3) Serve for a term of three years.

(d) The tobacco prevention and control advisory board, in collaboration with the department, shall develop a strategic plan for tobacco prevention and control, including:

(1) Developing and implementing effective and cost efficient programs, including health promotion and disease prevention;

(2) Developing adequate standards and benchmarks by which measures of program success under paragraph (1) of this subsection may be appropriately evaluated; and

(3) Assessing the effectiveness of programs engaged in health promotion and disease prevention.

The strategic plan shall be in writing and shall be a public document.

(e) The tobacco prevention and control advisory board shall advise the on the administration of the Hawaii tobacco prevention and control trust fund.

.(f) The department shall submit a report to the legislature, no later than twenty days prior to the convening of each regular session, providing an accounting of the receipts and expenditures of the Hawaii tobacco prevention and control trust fund.

.(g) The department shall post a monthly update on the department's website on the sources of moneys deposited into the tobacco prevention and control trust fund and expenditures of the moneys in the trust fund."

### PART III

SECTION 5. Chapter 28, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§28- Tobacco products and electronic smoking devices sales; online sales; report. (a) The department of the attorney**

general shall monitor all online sales of all tobacco products and electronic smoking devices in the State.

(b) The department of the attorney general shall post a monthly update on the department's website regarding the estimated number of tobacco products and electronic smoking device products entering the State and how many products, by tonnage, have been confiscated."

#### PART IV

SECTION 6. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to part XVIIIA to be appropriately designated and to read as follows:

**"§321-A Tobacco and synthetic nicotine products; testing.**

(a) The department of health shall establish scientific and standardized testing protocols for determining the presence of any flavoring, other than that of tobacco, in any tobacco product or synthetic nicotine product available for purchase in the State, including any tobacco product or synthetic nicotine product seized pursuant to section 712-\_\_\_\_\_.

(b) The department shall post the testing protocols and results of any tests on any tobacco product or synthetic nicotine product on the department's website.

(c) For the purposes of this section:

"Synthetic nicotine product" has the same meaning as defined in section 712-1258(7).

"Tobacco product" has the same meaning as defined in section 712-1258(7)."

SECTION 7. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to part IV be appropriately designated and



to read as follows:

**"§712-\_\_\_\_\_ Sale or advertising of flavored tobacco and synthetic nicotine products; retail sales; e-liquid products.**

.(1) Beginning January 1, 2023, it shall be unlawful for any retailer or any agent or employee of the retailer to:

- .(a) Sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco or synthetic nicotine product;
- .(b) Mislabel as nicotine-free, or sell or market for sale as nicotine-free, any e-liquid product that contains nicotine; or
- .(c) Market, advertise, or promote any electronic smoking device in a manner that is designed to appeal to an individual under twenty-one years of age.

.(2) A statement or claim directed to consumers or the public that the tobacco product or synthetic nicotine product is flavored, including text, color, or images on the tobacco product's or synthetic nicotine product's labeling or packaging that is used to explicitly or implicitly communicate that the tobacco product or synthetic nicotine product has a flavor other than tobacco made by a retailer or manufacturer or an agent or employee of the retailer or manufacturer in the course of the person's agency or employment, is prima facie evidence that the tobacco product or synthetic nicotine product is a flavored tobacco or synthetic nicotine product.

.(3) Any flavored tobacco or synthetic nicotine product found in the retailer's possession that is in violation of this section shall be considered contraband, promptly seized, and subject to

immediate forfeiture and destruction and shall not be subject to the procedures set forth in chapter 712A.

(4) For the first offense, any retailer that violates this section may be subject to an administrative fine of not more than \$500 and any agent or employee of the retailer who knowingly violates this section may be subject to an administrative fine of not more than \$500. Any subsequent offenses shall subject the offender to an administrative fine of no less than \$500 or more than \$2,000. Each flavored tobacco or synthetic nicotine product in the retailer's possession shall be considered a separate violation. All fines shall be paid to the department of health and deposited into the Hawaii tobacco prevention and control trust fund established pursuant to section 328L-5.

(5) Notwithstanding any other law to the contrary, any county may adopt a rule or ordinance that places greater restrictions on the access to flavored tobacco or synthetic nicotine products than provided for in this section. In the case of a conflict between this section and any county rule or ordinance regarding access to flavored tobacco or synthetic nicotine products, the more stringent restrictions shall prevail.

(6) For the purposes of this section:

"Distinguishable" means perceivable by either the sense of smell or taste.

"Electronic smoking device" has the same meaning as defined in section 712-1258(7).

"E-liquid" means any liquid or liquid-like substance, including heated smoking products, which may or may not contain nicotine, that is designed or intended to be used in an electronic

smoking device, whether or not packaged in a cartridge or other container. "E-liquid" does not include prescription drugs; medical cannabis or manufactured cannabis products; or medical devices used to inhale or ingest prescription drugs, including devices sold at a licensed medical cannabis dispensary.

"Entity" means one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity.

"Flavored tobacco or synthetic nicotine product" means any tobacco product or synthetic nicotine product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by a consumer either prior to or during the consumption of a tobacco product or synthetic nicotine product, including but not limited to any mentholated tobacco product or a product that contains a taste or smell relating to fruit, mint, menthol, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice.

"Labeling" means written, printed, pictorial, or graphic matter upon a tobacco product or synthetic nicotine product or any of its packaging.

"Packaging" means a pack, box, carton, or container of any kind, or if no other container, any wrapping, including cellophane, in which a tobacco product or synthetic nicotine product is sold or offered for sale to a consumer.

"Retailer" means an entity that sells, offers for sale, or exchanges or offers to exchange for any form of consideration tobacco products or synthetic nicotine products or e-liquids to

consumers. "Retailer" includes the owner of a tobacco retail location.

"Synthetic nicotine product" has the same meaning as defined in section 712-1258(7).

"Tobacco product" has the same meaning as defined in section 712-1258(7).

"Tobacco retail location" means any premises where tobacco products are sold or distributed to a consumer, including but not limited to any store, bar, lounge, cafe, stand, outlet, vehicle, cart, location, vending machine, or structure."

SECTION 8. Section 712-1258, Hawaii Revised Statutes, is amended to read as follows:

**"§712-1258 Tobacco products, synthetic nicotine products, and electronic smoking devices; persons under twenty-one years of age.** (1) It shall be unlawful to sell or furnish a tobacco product or synthetic nicotine 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, synthetic nicotine products, or electronic smoking devices shall check the identification of tobacco product, synthetic nicotine 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, synthetic nicotine 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, synthetic nicotine 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, synthetic nicotine 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, synthetic nicotine 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, synthetic nicotine 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, synthetic nicotine 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 product, synthetic nicotine product, or electronic smoking [~~devices~~] device sales to persons under twenty-one years of age.

(6) Any person who violates subsection (1) or (4), 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 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, synthetic nicotine 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, or heated smoking product, and any cartridge or other component of the device or related product.

"Heated smoking product" means a product that produces an inhalable aerosol by:

- (1) Heating the tobacco, nicotine, or other substance by means of an electronic smoking device without combustion of the tobacco, nicotine, or other substance; or
- (2) Heat generated from a combustion source that only or primarily heats rather than burns the tobacco, nicotine, or other substance.

"Synthetic nicotine product" means any product not derived from the tobacco plant 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. "Synthetic nicotine product" includes but is not limited to a cigarette, cigar, snuff, or snus not derived from or containing any tobacco leaf; a heated smoking product; or an electronic smoking device. "Synthetic nicotine product" does not include prescription drugs or 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.

"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, heated smoking product, 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."

PART V

SECTION 9. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§302A- Take back program for electronic smoking devices, flavored tobacco or synthetic nicotine products, and tobacco products; coordination.** (a) Each public school shall coordinate with the department of health as part of the take back program established pursuant to section 321-B for the proper disposal of electronic smoking devices, flavored tobacco or synthetic nicotine products, and tobacco products voluntarily disposed of by students.

(b) For purposes of this section:

"Electronic smoking device" has the same meaning as defined in section 712-1258(7).

"Flavored tobacco or synthetic nicotine product" has the same meaning as defined in section 712- .

"Tobacco product" has the same meaning as defined in section 712-1258(7)."

SECTION 10. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§321-B Take back program for electronic smoking devices, flavored tobacco or synthetic nicotine products, and tobacco products.** (a) The department of health shall coordinate with the department of education to establish and administer a take back



program by which public school students may voluntarily dispose of electronic smoking devices, flavored tobacco or synthetic nicotine products, and tobacco products in their possession.

(b) The take back program shall be implemented at all public high schools and intermediate schools.

(c) Notwithstanding any law to the contrary, a person under the age of twenty-one who disposes of an electronic smoking device, flavored tobacco or synthetic nicotine product, or tobacco product pursuant to a take back program established pursuant to this section shall not be subject to any penalty relating to the underage possession of tobacco products or electronic smoking devices.

(d) The take back program established pursuant to this section shall include a process for the collection and destruction of all products disposed of under this section.

(e) For purposes of this section:

"Electronic smoking device" has the same meaning as defined in section 712-1258(7).

"Flavored tobacco or synthetic nicotine product" has the same meaning as defined in section 712- .

"Tobacco product" has the same meaning as defined in section 712-1258(7)."

#### PART VI

SECTION 11. (a) No later than \_\_\_\_\_ days after the effective date of this Act, the department of health shall, in collaboration with the department of education, plan and schedule open meetings within all school complex areas and independent schools to

coordinate with students and solicit student input on measures to address the youth vaping epidemic.

(b) The meetings shall be held on a quarterly basis and shall be video recorded. Recordings of the meetings shall be posted on the department of health's website no later than seven calendar days after each meeting.

#### PART VII

SECTION 12. In codifying the new sections added by sections 6 and 10 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 13. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2060.

**Report Title:**

Tobacco Enforcement Special Fund; Hawaii Tobacco Settlement Special Fund; Hawaii Tobacco Prevention and Control Trust Fund; Reporting; DOH; AG; DOE; Flavored Tobacco Products; Synthetic Nicotine Products; Testing; Electronic Smoking Devices; Retail Sale; Advertising; Take Back Program; Labeling; Ban; Penalties

**Description:**

Requires DOH to post online monthly updates on all deposits and expenditures of the tobacco enforcement and Hawaii tobacco settlement special funds and Hawaii tobacco prevention and control trust fund. Requires DOH to submit annual reports to the legislature on the receipts and expenditures of the Hawaii tobacco settlement special fund and Hawaii tobacco prevention and control trust fund. Requires the attorney general to monitor online sales of tobacco products and electronic smoking device products and post online monthly updates. Requires DOH to establish a standardized and scientific testing process for the presence of flavoring in tobacco products and synthetic nicotine products and post this information online. Beginning 1/1/2023, prohibits the sale or distribution of all flavored tobacco and synthetic nicotine products in the State. Requires DOH to coordinate with DOE to establish a take back program for students to voluntarily dispose of electronic smoking devices, flavored tobacco or synthetic nicotine products, and tobacco products in their possession. Requires DOH and DOE to coordinate quarterly meetings with students on addressing the youth vaping epidemic. Effective 7/1/2060. (HD1)

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