

**TITLE 11**  
**DEPARTMENT OF HEALTH**  
**CHAPTER 36**  
**SALE OF PROPHYLACTICS THROUGH VENDING MACHINE**

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**§11-36-1 Purpose.**

The purpose of this Chapter is to establish rules for controlling the sale of prophylactics through vending machines. [Eff. MAR 12 1982] (Auth: HRS §§321-9, 321-10, 321-11, 321-115, 328-21) (Imp: HRS §§321-11, 321-115)

**§11-36-2 Definitions.**

As used in this chapter:

"Department" means department of health of the State of Hawaii.

"Director" means director of health of the department, or his duly authorized representative.

"Permittee" means a person who has obtained a permit from the department to sell prophylactics through vending machines.

"Prophylactics" means any device or appliance used or intended to be used for the prevention of venereal disease.

"School" includes every academic and noncollege type of school, whether under governmental supervision or otherwise, except Sabbath and trade-type schools.

"Vending machine" includes all coin-operated mechanical devices used to sell prophylactics. [Eff. Mar 12, 1982] (Auth: HRS §§321-11, 328-21) (Imp: HRS §§321-11, 321-115)

**§11-36-3 Permit and permit fee.**

(a) Each person who intends to sell prophylactics through vending machines shall first obtain a permit to do so from the department.

(b) A separate permit shall be required for each vending machine.

(c) The permit fee shall be \$10 per vending machine; except that governmental or non-profit organizations shall be exempt from paying this fee if:

- (1) The applicant is able to prove that the vending machine is owned and operated by a governmental or non-profit organization.
- (2) The applicant conforms with all of the other provisions of this chapter.
- (d) Each permit shall expire on June 30 of each year and an application to renew the permit shall be made prior to this date. There shall be a \$5 fee for renewal of the permit. Organizations exempt from paying a fee as provided in §11-36-3(c) are also exempt from paying the renewal fee.
- (e) Applications for permits or renewals shall be on forms provided by the department. The original permit shall be notarized.
- (f) The permittee shall be charged an additional \$5 for failure to renew the permit on or before June 30 of each year.
- (g) The permit shall be kept at the permittee's place of business or on the person. A copy of the permit shall be displayed securely on the vending machine or displayed with the other business licenses or permits at the establishment where the vending machine is located.
- (h) A permit shall not be transferable from one person to another, from place to place, or from one vending machine to another.
- (i) When a vending machine is relocated, the permittee shall notify the department in writing within ten days of such relocation. A new permit is required when a vending machine is relocated. [Eff. March 12, 1982 ] (Auth: HRS §§321-9, 321-10, 321-11, 321-115, 328-21) (Imp: HRS §§321-11, 321-115)

#### **§11-36-4 Location of vending machines.**

- (a) Before placing a vending machine in an establishment, the prospective permittee shall obtain written permission to do so from the proprietor or director of such establishment. Such permission shall be made available to the department upon request.

Vending machines shall not be located:

- (1) In schools.
- (2) In areas where heat, water, or other ambient conditions may deteriorate the vending machine or its contents. [Eff. March 12, 1982] (Auth: HRS §§321-9, 321-10, 321-11, 321-115, 328-21) (Imp: HRS §§321-11, 321-115)

#### **§11-36-5 Vending machines.**

- (a) Vending machines shall be suitable for dispensing prophylactics in accordance with the provisions of this chapter.

- (b) No items except prophylactics and educational literature about prophylactics or venereal disease shall be made available through vending machines.

When a vending machine is empty:

- (1) The purchaser shall be notified of this fact; or
- (2) The machine's design shall prevent the acceptance of any more coins; or
- (3) The purchaser's money shall be refunded.

(d) When a vending machine is defective, it shall be so marked by the posting of conspicuous signs or notices. [Eff. March 12, 1982] (Auth: HRS §§321-9, 321-10, 321-11, 321-115) (Imp: HRS §§321-11, 321-115)

#### **§11-36-6 Types of prophylactics which may be sold.**

(a) All brands of prophylactics that are sold in vending machines shall be registered with the department.

(b) These brands shall have been tested and approved by:

(1) The United States Food and Drug Administration; or

(2) An agency of the state where the prophylactic was manufactured; provided that such agency is authorized by such state to test and approve prophylactics.

(c) Prophylactics shall be adequately sealed to prevent deterioration.

(d) Prophylactics shall be labeled with the date of manufacture or the expiration date. Such date of manufacture or expiration date shall be legible to the purchaser. No prophylactics shall be sold more than two years after the date of manufacture. [Eff. March 12, 1982 ] (Auth: HRS §§321-9, 321-10, 321-11, 321-115, 328-21) (Imp: HRS §§321-11, 321-115)

#### **§11-36-7 Testing of prophylactics.**

(a) The director may collect samples of prophylactics from vending machines for testing as deemed necessary.

(b) The permittee shall make samples available to the director without cost.

(c) Prophylactics shall be tested in a manner approved by the director. [Eff. March 12, 1982] (Auth: HRS §§321-9, 321-10, 321-11, 321-115) (Imp: HRS §§321-11, 321-115)

#### **§11-36-8 Penalty.**

Any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$500 or by imprisonment for not more than one year or both, as provided under §321-18, HRS. Each and every violation of the provisions of this chapter shall constitute a separate offense. [Eff. March 12, 1982 ] (Auth: HRS §§321-9, 321-10, 321-11, 321-115, 328-22) (Imp: HRS §§321-18, 321-115, 328-22, 328-29)

#### **§11-36-9 Severability.**

If any provision of this chapter, or the application thereof to any person circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff. March-12, 1982] (Auth: HRS §§321-9, 321-10, 321-11, 321-115, 328-21) (Imp: HRS §§321-11, 321-115)