

JAN 19 2024

A BILL FOR AN ACT

RELATING TO TOBACCO PRODUCTS.

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

1 SECTION 1. The legislature finds that tobacco use remains
2 the leading cause of preventable death in the United States,
3 including Hawaii. The legislature further finds that there has
4 been a precipitous increase in recent consumer sales of
5 electronic smoking devices, sometimes called "vapes", which
6 contain significantly higher levels of nicotine per inhalation
7 compared to conventional cigarettes. Electronic smoking devices
8 have played a major role in the increase in youth nicotine
9 addiction rates, which had previously been on the decline.

10 The legislature also finds that counties are uniquely
11 positioned to quickly address the health needs of their
12 communities and have been using that ability to great success.
13 Historically, Hawaii has passed forward-thinking legislation to
14 address the high usage of tobacco products. These policies were
15 first adopted at the county level to quickly address the
16 counties' need to protect their communities from the relentless
17 promotional targeting by tobacco companies. Regulations to



1 raise the minimum age for the purchase of tobacco products to
2 twenty-one years of age were first passed in the county of
3 Hawaii, followed by other counties, and finally by the State to
4 create uniformity. Likewise, laws that prohibit smoking in
5 certain locations, as well as in motor vehicles when a child is
6 present, were also initially adopted at the county level before
7 the State took action.

8 The legislature further finds that the rate of tobacco use
9 among youth has increased to epidemic levels. According to the
10 2019 Hawaii State and Counties Youth Risk Behavior Surveys, 30.6
11 per cent of public middle school students and 48.3 per cent of
12 public high school students have tried using electronic smoking
13 devices. The survey also revealed that 17.7 per cent of middle
14 school students and 30.6 per cent of high school students
15 currently vape.

16 In addition, the legislature also finds that tobacco
17 companies have spent millions of dollars to ensure that they are
18 developing and marketing products to young people to increase
19 their sales and boost their yearly profits into the tens of
20 billions of dollars. These companies have vast resources to
21 pour into targeting a new generation of addicts. Furthermore,



1 the United States Food and Drug Administration, which is
2 responsible for regulating tobacco products containing nicotine,
3 has a lengthy authorization process with loopholes, long waiting
4 periods, and little ability to regulate the ever-changing
5 strategies of profit-focused tobacco companies.

6 The legislature acknowledges that section 328J-11.5(a),
7 Hawaii Revised Statutes, provides that "sales of cigarettes,
8 tobacco products, and electronic smoking devices are a matter of
9 statewide concern" and that it is "the intent of the legislature
10 to regulate the sale of cigarettes, tobacco products, and
11 electronic smoking devices in a uniform and exclusive manner".
12 (Emphasis added.) Section 328J-11.5(b), Hawaii Revised Statutes,
13 preempts "[a]ll local ordinances or regulations that regulate
14 the sale of cigarettes, tobacco products, and electronic smoking
15 devices" and voids "existing local laws and regulations
16 conflicting with" chapter 328J, Hawaii Revised Statutes, which
17 is the state law that regulates smoking. Section 328J-11.5(c),
18 Hawaii Revised Statutes, carves out an exception to the
19 exclusivity of state regulations, by setting forth that nothing
20 in chapter 328J, Hawaii Revised Statutes, "shall be construed to
21 limit a county's authority" to adopt ordinances; provided that



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1 the ordinance is more stringent than state law. The legislature
2 acknowledges that the provisions of section 328J-11.5, Hawaii
3 Revised Statutes, read together with section 328J-15, Hawaii
4 Revised Statutes, may create an ambiguity in the effectiveness
5 of county ordinances that are *not* in conflict with chapter 328J,
6 Hawaii Revised Statutes, and the authority given to the counties
7 in adopting ordinances that regulate the sale of cigarettes,
8 tobacco products, and electronic smoking devices in their
9 communities.

10 Furthermore, the legislature finds that a flexible
11 regulation system is needed to address the multibillion-dollar
12 marketing campaigns of tobacco companies focused on Hawaii's
13 youth. All levels of government, including counties, need to
14 collaborate with youth, their parents, and educational
15 institutions, to quickly address tobacco companies' predatory
16 practices through the implementation of reasonable restrictions
17 on the sale of and access to these addictive products.

18 Accordingly, the purpose of this Act is to:

- 19 (1) Repeal existing law that provides that all local
20 ordinances or regulations that regulate the sale of
21 cigarettes, tobacco products, and electronic smoking



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1 devices are preempted and that existing local laws and
2 regulations conflicting with the state law on smoking
3 are null and void; and

4 (2) Clarify that counties retain the authority to adopt
5 ordinances that regulate the sale of cigarettes,
6 tobacco products, and electronic smoking devices, as
7 long as the ordinances do not conflict with and are
8 more stringent than the state law on smoking.

9 SECTION 2. Section 328J-11.5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[+]§328J-11.5[+] **Statewide concern.** (a) Sales of
12 cigarettes, tobacco products, and electronic smoking devices are
13 a statewide concern. It is the intent of the legislature to
14 regulate the sale of cigarettes, tobacco products, and
15 electronic smoking devices in a uniform [~~and exclusive~~]
16 manner[.] to the extent reasonably possible.

17 [~~(b) All local ordinances or regulations that regulate the~~
18 ~~sale of cigarettes, tobacco products, and electronic smoking~~
19 ~~devices are preempted, and existing local laws and regulations~~
20 ~~conflicting with this chapter are null and void.~~



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1 ~~(e)~~ (b) Nothing in this chapter shall be construed to
2 limit a county's authority [~~under~~] to enact ordinances that
3 regulate the sale of cigarettes, tobacco products, and
4 electronic smoking devices within the county in accordance with
5 section 328J-15."

6 SECTION 3. Section 328J-15, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) Nothing in this chapter shall prohibit a county from
9 enacting ordinances that regulate the sale of cigarettes,
10 tobacco products, and electronic smoking devices within the
11 county; provided that the ordinances do not directly conflict
12 with and are more stringent than the provisions of this
13 chapter."

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

17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 6. This Act shall take effect upon its approval.



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INTRODUCED BY:

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Report Title:

Cigarettes, Tobacco Products, and Electronic Smoking Devices;
Sale; Regulation; County Authority

Description:

Repeals existing law that preempted local ordinances or regulations that regulate the sale of cigarettes, tobacco products, and electronic smoking devices and nullified and voided any conflicting local laws and regulations. Allows counties to adopt ordinances that regulate the sale of cigarettes, tobacco products, and electronic smoking devices that do not conflict with and are more stringent than the state law that governs smoking.

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

