

JAN 15 2025

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# 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 utilizing that ability to great  
13 success. Historically, Hawaii has passed forward-thinking  
14 legislation to address the high usage of tobacco products.  
15 These policies were first adopted at the county level to quickly  
16 address the counties' need to protect their communities from the  
17 relentless promotional targeting by tobacco companies.



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

8       The legislature finds that the rate of tobacco use among  
9 the 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       The legislature also finds that the tobacco companies have  
17 spent millions of dollars to ensure that they are developing and  
18 marketing products to young people to increase their sales and  
19 boost their yearly profits into the tens of billions of dollars.  
20 These companies have boundless resources to pour into targeting  
21 a new generation of addicts. Furthermore, the United States



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



1 the ordinance is more stringent than state law. The legislature  
2 acknowledges that the language in 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 The legislature acknowledges that most counties, including  
11 the county of Hawaii, city and county of Honolulu, and county of  
12 Maui, have introduced local legislation to prohibit the sale of  
13 flavored tobacco products to address the unique susceptibility  
14 of youths to the marketing of flavored tobacco products. This  
15 prohibition is not in conflict with and is more stringent than  
16 the restrictions of chapter 328J, Hawaii Revised Statutes.  
17 However, this legislation cannot be enacted until existing state  
18 law preempting county ordinances on the sale of tobacco products  
19 is repealed.

20 The legislature finds that a flexible regulation system is  
21 needed to address the multibillion-dollar marketing campaigns of



1 tobacco companies focused on our youth. All levels of  
2 government, including counties, need to collaborate with youth,  
3 their parents, and educational institutions to quickly address  
4 the tobacco companies' predatory practices through the  
5 implementation of reasonable restrictions on the sale of and  
6 access to these highly addictive products.

7 Accordingly, the purpose of this Act is to:

8 (1) Repeal existing law that provides that all local  
9 ordinances or regulations that regulate the sale of  
10 cigarettes, tobacco products, and electronic smoking  
11 devices are preempted and that existing local laws and  
12 regulations conflicting with the state law on smoking  
13 are null and void; and

14 (2) Clarify that counties retain the authority to adopt  
15 ordinances that regulate the sale of cigarettes,  
16 tobacco products, and electronic smoking devices, as  
17 long as the ordinances do not conflict with and are  
18 more stringent than the state law on smoking.

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



1           "~~[+]~~§328J-11.5~~[+]~~ **Statewide concern.** (a) Sales of  
2 cigarettes, tobacco products, and electronic smoking devices are  
3 a statewide concern. It is the intent of the legislature to  
4 regulate the sale of cigarettes, tobacco products, and  
5 electronic smoking devices in a uniform ~~[and-exclusive]~~  
6 manner~~[→]~~ to the extent reasonably possible.

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

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

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

18           "(b) Nothing in this chapter shall prohibit a county from  
19 enacting ordinances that regulate the sale of cigarettes,  
20 tobacco products, and electronic smoking devices within the  
21 county; provided that the ordinances do not directly conflict



1 with and are more stringent than the provisions of this  
2 chapter."

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

6 SECTION 5. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect on July 1, 2025.

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INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, appearing to be 'F. J. ...', written over a horizontal line.

# S.B. NO. 89

**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 govern smoking.

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

