HOUSE OF REPRESENTATIVES
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

H.C.R. NO. 80

HOUSE CONCURRENT RESOLUTION

REQUESTING THE UNITED STATES FOOD AND DRUG ADMINISTRATION TO PROMOTE TRANSPARENCY AND ENFORCEMENT BY IMMEDIATELY PUBLISHING PREMARKET TOBACCO PRODUCT APPLICATIONS.

WHEREAS, according to a 2020 joint study by the United States Food and Drug Administration (FDA) and Centers for Disease Control and Prevention (CDC), there are an estimated 3,600,000 youth who currently use e-cigarettes, or electronic nicotine delivery systems (ENDS); and

WHEREAS, according to the Hawaii Youth Risk Survey, commissioned by the Department of Health, Hawaii high school students are twice as likely as youth nationally to vape; and

WHEREAS, the 2017 Hawaii Youth Tobacco Survey found that Hawaii has the highest rate of e-cigarette use among middle school students and the second highest rate among high school students in the United States; and

WHEREAS, the marketing of e-cigarettes and ENDS products aggressively targets vulnerable youth users with the introduction of flavored e-cigarettes and ENDS products, as well as advertisements in social media employing celebrities and influencers, which ultimately promote the illegal sale and use of e-cigarettes and ENDS products by underage users; and

WHEREAS, the United States Surgeon General, United States Department of Health and Human Services, and CDC warns that the use of e-cigarettes and ENDS products are unsafe due to the highly addictive nature of nicotine, harm to the developing adolescent brain, carcinogens and other toxins present in the aerosol inhaled, and potentially lethal toxins if the content of refill cartridges are consumed; and

WHEREAS, the passage of the 2021 omnibus Consolidated Appropriations Act in December 2020 amended the Jenkins Act, as previously amended by the Prevent All Cigarette Trafficking Act, to mandate that any delivery sale of ENDS will require an adult's signature upon delivery, ostensibly increasing the difficulty for minors to illegally obtain ENDS; and

WHEREAS, the FDA required any seller and manufacturer of new tobacco products, including e-cigarettes and ENDS products, to submit a Premarket Tobacco Product Application by September 9, 2020; and

WHEREAS, the FDA has seen an influx of Premarket Tobacco Product Applications: the FDA received 14,751 applicants in August and September 2019 alone; and

WHEREAS, these recent applicants represent ninety-five percent of the total applicants; and

WHEREAS, the FDA has released the information of only three separate entities that have successfully received marketing orders since 2015; and

WHEREAS, pending Premarket Tobacco Product applicants are virtually unidentified, leaving a gap between current federally approved e-cigarette sellers and non-compliant sellers or, non-applicants; and

WHEREAS, to date, no e-cigarette or ENDS product has been approved by the FDA through its science-driven, six-stage process of Premarket Tobacco Product Marketing Application review; now, therefore,

BE IT RESOLVED by the House of Representatives of the Thirty-first Legislature of the State of Hawaii, Regular Session of 2021, the Senate concurring, that the FDA is requested to promote transparency and enforcement by immediately publishing Premarket Tobacco Product Applications; and

BE IT FURTHER RESOLVED that the FDA is requested to disclose Premarket Tobacco Product Applications applicant

H.C.R. NO. 80

information to the State in the interests of consumer protection against illegally marketed ENDS products; and

BE IT FURTHER RESOLVED that the Premarket Tobacco Product Application data received by the State is requested to be applied by the Department of Commerce and Consumer Affairs to identify businesses not complying with federal requests to continue the legal sale of e-cigarettes and ENDS products; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Commissioner of the Food and Drug Administration, Director of the Centers for Disease Control and Prevention, Governor, Director of Health, Director of Commerce and Consumer Affairs, and Executive Director of the Division of Consumer Advocacy.

OFFERED BY: _____

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