

JAN 25 2023

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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 continued to increase to epidemic levels.  
10 According to the 2019 Hawaii State and Counties Youth Risk  
11 Behavior Surveys, 30.6 per cent of public middle school students  
12 and 48.3 per cent of public high school students have tried  
13 using electronic smoking devices. The survey also revealed that  
14 17.7 per cent of middle school students and 30.6 per cent of  
15 high school students currently vape.

16       The legislature finds that the tobacco companies have spent  
17 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 the "sale 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 "all local ordinances or regulations that regulate the  
14 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 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 at least as protective of the rights of  
2 nonsmokers and the ordinance is more stringent than state law.  
3 The legislature acknowledges that the language in section 328J-  
4 11.5, Hawaii Revised Statutes, read together with section 328J-  
5 15, Hawaii Revised Statutes, may create an ambiguity in the  
6 effectiveness of county ordinances that are not in conflict with  
7 chapter 328J, Hawaii Revised Statutes, and the authority given to  
8 the counties in adopting ordinances that regulate the sale of  
9 cigarettes, tobacco products, and electronic smoking devices in  
10 their communities.

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

19 Accordingly, the purpose of this Act is to:

20 (1) Clarify that county ordinances or regulations that  
21 regulate the sale of cigarettes, tobacco products, and



1           electronic smoking devices are null and void only if  
2           they are in direct conflict with or less stringent  
3           than the provisions in chapter 328J, Hawaii Revised  
4           Statutes; and

5           (2) Clarify that counties retain the authority to adopt  
6           ordinances that regulate the sale of cigarettes,  
7           tobacco products, and electronic smoking devices, as  
8           long as the ordinances are more stringent than the  
9           provisions in chapter 328J, Hawaii Revised Statutes.

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

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

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



1 void[-] to the extent that they are in direct conflict with or  
2 less stringent than the regulations in this chapter.

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

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

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

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

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



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

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

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and difficult to decipher.

# S.B. NO. 1447

**Report Title:**

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

**Description:**

Clarifies that county ordinances or regulations that regulate the sale of cigarettes, tobacco products, and electronic smoking devices are null and void only if they are in direct conflict with or less stringent than state law that governs smoking. Clarifies that counties retain the authority to adopt ordinances that regulate the sale of cigarettes, tobacco products, and electronic smoking devices, as long as the ordinances do not directly conflict with and are more stringent than the provisions in 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.*

