
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" or
6 "e-cigarettes", which contain significantly higher levels of
7 nicotine per inhalation compared to conventional cigarettes.
8 The escalating use of electronic smoking devices has led to a
9 significant rise in youth nicotine addiction. These devices
10 have been linked to severe lung disease, potential harm to brain
11 development, and acute nicotine poisoning.

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



1 school students and 30.6 per cent of high school students
2 currently vape, numbers which have likely only increased.

3 The legislature also finds that counties are uniquely
4 positioned to quickly address the health habits of their
5 communities, such as youth vaping, and have been utilizing that
6 ability to great success. Historically, Hawaii has passed
7 forward-thinking legislation to address the high usage of
8 tobacco products. These policies were first adopted at the
9 county level to quickly address the counties' need to protect
10 their communities from the relentless promotional targeting by
11 tobacco companies. Regulations to raise the minimum age for the
12 purchase of tobacco products to twenty-one years of age was
13 first passed in the county of Hawaii, followed by other
14 counties, and finally by the State to create uniformity.
15 Likewise, laws that prohibit smoking in certain locations, as
16 well as in motor vehicles when a keiki is present, were also
17 initially adopted at the county level before action was taken by
18 the State.

19 The legislature also finds that the tobacco companies have
20 spent millions of dollars to ensure that they are developing and
21 marketing products to young people to increase their sales and



1 boost their yearly profits into the tens of billions of dollars.
2 These companies have boundless resources to pour into targeting
3 a new generation of addicts. Furthermore, the United States
4 Food and Drug Administration, which is responsible for
5 regulating tobacco products containing nicotine, has a lengthy
6 authorization process with loopholes, long waiting periods, and
7 little ability to regulate the ever-changing strategies of
8 profit-focused tobacco companies.

9 The legislature acknowledges that section 328J-11.5(a),
10 Hawaii Revised Statutes, provides that "[s]ales of cigarettes,
11 tobacco products, and electronic smoking devices are a statewide
12 concern" and that it is "the intent of the legislature to
13 regulate the sale of cigarettes, tobacco products, and
14 electronic smoking devices in a uniform and exclusive manner."
15 Section 328J-11.5(b), Hawaii Revised Statutes, preempts "[a]ll
16 local ordinances or regulations that regulate the sale of
17 cigarettes, tobacco products, and electronic smoking devices"
18 and voids "existing local laws and regulations conflicting with"
19 chapter 328J, Hawaii Revised Statutes, which regulates smoking.
20 The tobacco industry has historically used preemption as a
21 tactic to prevent local governments from adopting stronger



1 tobacco control measures, thereby protecting its interests at
2 the expense of public health.

3 Section 328J-11.5(c), Hawaii Revised Statutes, carves out
4 an exception to the exclusivity of state regulations by setting
5 forth that nothing in chapter 328J, Hawaii Revised Statutes,
6 "shall be construed to limit a county's authority" to adopt
7 ordinances; provided that the ordinance is more stringent than
8 state law. The legislature acknowledges that the language in
9 section 328J-11.5, Hawaii Revised Statutes, read together with
10 section 328J-15, Hawaii Revised Statutes, may create an
11 ambiguity in the effectiveness of county ordinances that are not
12 in conflict with chapter 328J, Hawaii Revised Statutes, and the
13 authority given to the counties in adopting ordinances that
14 regulate the sale of cigarettes, tobacco products, and
15 electronic smoking devices in their communities.

16 The legislature finds that an adaptive regulation system is
17 needed to address the multibillion-dollar marketing campaigns of
18 tobacco companies focused on our youth. All levels of
19 government, including counties, need to collaborate with youth,
20 their parents, and educational institutions, to quickly address
21 the tobacco companies' predatory practices through the



1 implementation of reasonable restrictions on the sale of and
2 access to these addictive products.

3 Accordingly, the purpose of this Act is to:

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

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

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

17 "[+]§328J-11.5[+] **Statewide concern.** (a) Sales of
18 cigarettes, tobacco products, and electronic smoking devices are
19 a statewide concern. It is the intent of the legislature to
20 regulate the sale of cigarettes, tobacco products, and



1 electronic smoking devices in a uniform [~~and exclusive~~]
2 manner[-] to the extent reasonably possible.

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

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

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

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



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

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

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

7

INTRODUCED BY: _____



By Request

JAN 18 2024



H.B. NO. 1854

Report Title:

Hawaii State Association of Counties Package; Tobacco Products; Regulation

Description:

Repeals existing law that provides that all local ordinances or regulations that regulate the sale of cigarettes, tobacco products, and electronic smoking devices are preempted and that existing local laws and regulations conflicting with the state law on smoking are void. 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 conflict with and are more stringent than the state law on smoking.

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