

S.B. NO. 3131

JAN 24 2024

A BILL FOR AN ACT

RELATING TO HEALTH.

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 disease and death in the United
3 States and in Hawaii. The legislature also finds that while
4 there has been a significant decline in the use of combustible
5 cigarettes over the last decade, there has been a dramatic
6 increase in the use of electronic smoking devices nationwide,
7 especially by Hawaii's youth.

8 Vaping in Hawaii is at an epidemic level. According to the
9 2011 and 2015 Hawaii Youth Tobacco Survey, during these four
10 years, the proportion of youth experimenting with electronic
11 smoking devices increased six-fold among middle school youth and
12 four-fold among high school youth. According to the 2017-2021
13 Hawaii Youth Risk Behavior Survey, twenty-four per cent of
14 public middle school students and forty-one per cent of public
15 high school students had tried electronic smoking devices. The
16 2017-2021 Hawaii Youth Risk Behavior Survey also indicates that
17 thirteen per cent of middle school students and twenty-three per
18 cent of high school students currently vape. The 2017-2021

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1 Hawaii Youth Risk Behavior Survey also shows the prevalence is
2 higher in the neighbor island counties with high school vaping
3 exceeding twenty-seven per cent for Hawaii, Maui, and Kauai
4 counties. These statistics rank among the highest in the
5 nation. As most vaping products contain addictive levels of
6 nicotine, the elevated use of electronic smoking devices has led
7 to a significant rise in youth nicotine addiction.

8 Historically, Hawaii has passed forward-thinking
9 legislation to address the high usage of tobacco products, and
10 many ordinances were first adopted at the county level to
11 quickly address the counties' need to protect their communities
12 from the relentless promotional targeting by tobacco companies.
13 Ordinances to raise the minimum age for the purchase of tobacco
14 products to twenty-one years were first enacted in the county of
15 Hawaii, followed by other counties. Subsequently, the State
16 enacted section 712-1258, Hawaii Revised Statutes, to establish
17 a statewide uniform minimum age of twenty-one years. Likewise,
18 ordinances that prohibit smoking in certain locations, as well
19 as in motor vehicles when keiki are present, were also initially
20 adopted at the county level before the State took action.

21 The enactment of Act 206, Session Laws of Hawaii 2018,
22 codified as section 328J-11.5, Hawaii Revised Statutes, made the

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1 sale of cigarettes, tobacco products, and electronic smoking
2 devices a matter of statewide concern, and preempted any
3 existing or future local ordinances that restricted the sale of
4 these products. The tobacco industry has historically used
5 preemption as a tactic to prevent local governments from
6 adopting stronger tobacco control measures, thereby protecting
7 its interests at the expense of public health.

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

16 Accordingly, the purposes of this Act are to:

- 17 (1) Repeal section 328J-11.5, Hawaii Revised Statutes,
18 which provides that all local ordinances or
19 regulations that regulate the sale of cigarettes,
20 tobacco products, and electronic smoking devices are
21 preempted and that existing local laws and regulations

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1 conflicting with chapter 328J, Hawaii Revised

2 Statutes, are null and void; and

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

8 SECTION 2. Section 328J-11.5, Hawaii Revised Statutes, is
9 repealed.

10 [~~["§328J-11.5] Statewide concern. (a) Sales of~~
11 ~~cigarettes, tobacco products, and electronic smoking devices are~~
12 ~~a statewide concern. 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 ~~(b) All local ordinances or regulations that regulate the~~
16 ~~sale of cigarettes, tobacco products, and electronic smoking~~
17 ~~devices are preempted, and existing local laws and regulations~~
18 ~~conflicting with this chapter are null and void.~~

19 ~~(c) Nothing in this chapter shall be construed to limit a~~
20 ~~county's authority under section 328J-15."]~~

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1 SECTION 3. 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.

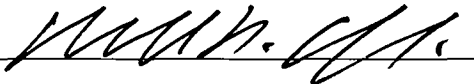
4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken.

6 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:



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BY REQUEST

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Report Title:

Cigarettes; Tobacco Products; Electronic Smoking Devices; Sales;
County Preemption; Repeal

Description:

Repeals section 328J-11.5, HRS.

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

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO HEALTH.

PURPOSE: To restore counties' authority to enact ordinances for cigarette, tobacco products, and electronic smoking device (ESD) control that are more stringent than state statutes.

MEANS: Repeal section 328J-11.5, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The enactment of Act 206, Session Laws of Hawaii 2018, codified as section 328J-11.5, HRS, preempted any existing or future local ordinances that restricted or would restrict the sale of cigarettes, tobacco products, and ESDs more stringently than state statutes. The tobacco companies have used preemption in other jurisdictions to protect their interests at the expense of public health.

Historically, Hawaii has passed forward-thinking legislation to address the high usage of tobacco products, and many ordinances were first adopted at the county level to quickly address the counties' need to protect their communities from the relentless promotional targeting by tobacco companies. Hawaii county first passed an ordinance to raise the minimum age for the purchase of tobacco products to twenty-one years, followed by other counties in Hawaii. Subsequently, the State enacted a similar statute to establish a uniform minimum age, codified as section 712-1258, HRS.

Likewise, ordinances that prohibit smoking in certain locations, as well as in motor vehicles when keiki are present, were also initially adopted at the county level before the State took action.

This bill will allow counties to respond to the current epidemic of youth vaping. Rates of ESD use among youth vary by county. The average percentage of high school students who ever used ESDs in the years 2017, 2019, and 2021 were highest in Hawaii and Maui counties at 48 percent, followed by Kauai county at 44 percent, then Honolulu county at 38 percent. The average percentage of middle school students who ever used ESDs in the same three years were 29 percent in Hawaii county, 28 percent in Kauai county, 27 percent in Maui county, and 21 percent in Honolulu county.^{1,2} Most ESDs contain nicotine, which is addictive, and youth who regularly use ESDs are more likely to use tetrahydrocannabinol and other substances. The unrestricted promotion of ESDs has addicted a new generation of youth to the nicotine and toxic chemicals and increased the likelihood of exposure to harmful co-use with other substances and likelihood for smoking cigarettes in the future.^{3,4} Comprehensive evidence-based prevention statutes and ordinances are needed at all levels of government to protect our youth from the harms of nicotine addiction.

¹Hawaii IBIS - Query Result—Hawaii Youth Risk Behavior Survey (YRBS) Data—Electronic vapor product—Current use, High Schools, County-level. (2017-2021). Retrieved 9-14-2023, from https://hhdw.org/report/query/result/yrbs/VaporEver/VaporEver_HS_CNTY.html

²Hawaii IBIS - Query Result—Hawaii Youth Risk Behavior Survey (YRBS) Data—Electronic vapor product—Current use, Middle Schools, County-level. (2017-2021). Retrieved 9-14-2023, from https://hhdw.org/report/query/result/yrbs/VaporEver/VaporEver_MS_CNTY.html

³US Department of Health and Human Services. E-cigarette Use Among Youth and Young Adults: A Report of the Surgeon General. pdf icon [PDF - 8.47MB]. Atlanta, GA: US Department of Health and Human Services, CDC; 2016. Accessed July 27, 2018.

⁴Bruijnzeel, Adriaan W. "The Unhealthy Association Between Smoking, Vaping, and Other Drug Use." *Nicotine & Tobacco Research* 24, no. 8 (August 1, 2022): 1139-40. <https://doi.org/10.1093/ntr/ntac130>.

Impact on the public: This bill will allow the counties to regulate more stringently the sales of cigarettes, tobacco products, and ESDs, and improve community health promotion and disease prevention efforts.

Impact on the department and other agencies: This bill would allow greater coordination between the department and its county counterparts in fighting the scourge of smoking, vaping, and tobacco product use.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HTH 590.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.