

S.B. NO. 1436

JAN 23 2025

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 by youth
7 nationwide, but especially by Hawaii's youth.

8 Vaping in Hawaii has reached epidemic levels. According to
9 the 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 2021 Hawaii
13 Youth Risk Behavior Survey, thirteen per cent of public middle
14 school students and thirty-two per cent of public high school
15 students had tried electronic smoking devices. The 2021 Hawaii
16 Youth Risk Behavior Survey also indicates that seven per cent of
17 middle school students and fifteen per cent of high school
18 students currently vape. The 2021 Hawaii Youth Risk Behavior

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1 Survey also shows the prevalence is higher in the neighbor
2 island counties with high school vaping at twenty-two per cent
3 for Hawaii County, eighteen per cent in Maui County, and sixteen
4 per cent in Kauai County. As most vaping products contain
5 addictive levels of nicotine, the elevated use of electronic
6 smoking devices has led to a significant rise in youth nicotine
7 addiction.

8 After a decade of inaction, the public health problem of
9 youth vaping has evolved and now affects multiple generations.
10 E-cigarette products on the market have dramatically increased
11 in nicotine content. Nationally, sales of e-cigarettes with the
12 highest levels of nicotine (five per cent or greater) increased
13 from five per cent of total sales in 2017 to eighty-one per cent
14 in 2022. There is also a growing young adult population of e-
15 cigarette users. In 2022, Hawaii Behavioral Risk Factor
16 Surveillance Survey data revealed that twenty-seven per cent of
17 young adults age eighteen to twenty-four and twenty-five per
18 cent of adults age twenty-five to thirty-four reported current
19 vaping. Alarmingly, teachers and administrators throughout
20 Hawaii share anecdotal reports of possession and use of
21 electronic smoking devices in elementary schools among children
22 as young as second grade.

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

14 The enactment of Act 206, Session Laws of Hawaii 2018,
15 codified as section 328J-11.5, Hawaii Revised Statutes, made the
16 sale of cigarettes, tobacco products, and electronic smoking
17 devices a matter of statewide concern, and preempted any
18 existing or future local ordinances that restricted the sale of
19 these products. The tobacco industry has historically used
20 preemption as a tactic to prevent local governments from
21 adopting stronger tobacco control measures, thereby protecting

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1 its interests at the expense of public health and Hawaii's
2 youth.

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

11 Accordingly, the purpose of this Act is to repeal the
12 preemption on county ordinances that regulate the sale of
13 cigarettes, tobacco products, and electronic smoking devices,
14 thereby restoring counties' authority to adopt more stringent
15 ordinances than state statutes found in the Hawaii Revised
16 Statutes.

17 SECTION 2. Section 328J-11.5, Hawaii Revised Statutes, is
18 repealed.

19 [~~§328J-11.5~~ ~~Statewide concern.~~ (a) ~~Sales of~~
20 ~~cigarettes, tobacco products, and electronic smoking devices are~~
21 ~~a statewide concern. It is the intent of the legislature to~~

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1 ~~regulate the sale of cigarettes, tobacco products, and~~
2 ~~electronic smoking devices in a uniform and exclusive manner.~~

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

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

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

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

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INTRODUCED BY: 

17

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.

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JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO HEALTH.

PURPOSE: To restore counties' authority to adopt ordinances that regulate the sales of cigarettes, tobacco products, and electronic smoking devices (ESDs) 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 adopted an ordinance to raise the minimum age for the purchase of tobacco products to twenty-one years, followed by other counties in Hawaii. Subsequently, Hawaii 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 Hawaii 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 percentage of high school students who ever used ESDs in 2021 were highest in Hawaii County at 40 percent, followed by Maui County at 37 percent, then Kauai County at 35 percent, then the City and County of Honolulu at 30 percent. The percentage of middle school students who ever used ESDs in the same year was 16 percent in Hawaii County, 15 percent in Kauai and Maui Counties, and 11 percent in the City and County of Honolulu.^{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 nicotine and toxic chemicals and has increased the likelihood of exposure to harmful co-use of other substances and the 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. (2021). Retrieved 8-06-2024, 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. (2021). Retrieved 8-06-2024, 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: City and County of Honolulu; Hawaii County;
Kauai County; and Maui County.

EFFECTIVE DATE: Upon approval.