A BILL FOR AN ACT

RELATING TO PUBLIC HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that tobacco use continues to be a public health problem in Hawaii, causing approximately one thousand four hundred deaths per year among adults and costing approximately $526,000,000 in direct health care expenditures and $387,300,000 in lost productivity in the State. In response to the heavy burden of tobacco use, Hawaii enacted many tobacco control policies including prohibiting smoking in places open to the public and places of employment and raising the minimum age for the sale of tobacco products from eighteen to twenty-one.

Many of these tobacco control initiatives were initially led by the counties and later adopted by the State, which extended the protections statewide and ultimately saved the State $1,000,000,000 in health care costs over ten years.

The legislature further finds that different communities need different solutions, which may be more effectively addressed at the local level since local governments can respond
more directly to the needs of the people who live and work in the community.

The legislature additionally finds that although it is important to establish minimum protections statewide, local-level policies are integral to tobacco control because they enable a targeted approach to reduce health disparities. The 2017 Youth Risk Behavior Survey found that while 25.5 per cent of high school students in the State currently vape, usage rates in both Hawaii county and Maui county exceed the statewide rate, at 31.8 per cent and 32.4 per cent, respectively.

The legislature understands that for public health, communities must not be prevented from working with their local elected officials to pass laws tailored to their unique needs. Repealing existing laws or preventing future enactment of laws that are more stringent or protective of public health than state laws will diminish fundamental county governance principles.

In 2006, the legislature expressly allowed local jurisdictions to pass smoking ordinances more stringent than state law. The legislature recognizes that over the years, communities adopted and put into action some of the strongest
and most innovative and effective tobacco control policies that served as catalysts for changing social norms about tobacco use. These policies discourage young people from initiating tobacco use and encourage adult tobacco users to quit. A national Healthy People 2020 objective calls to eliminate state laws that preempt stronger local tobacco control laws.

The purpose of this Act is to limit the State’s preemption of local ordinances that regulate the sale of cigarettes, tobacco products, and electronic smoking devices to allow the counties to enact ordinances more stringent than state law.

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

"[§][328J-11.5][Statewide concern.] Protection of public health. (a) Sales and use of cigarettes, tobacco products, and electronic smoking devices are a [statewide concern.] matter of concern to public health. It is the intent of the legislature to regulate the sale and use of cigarettes, tobacco products, and electronic smoking devices [in a uniform and exclusive manner.] as a means to protect public health.

(b) All local ordinances or regulations that regulate the sale and use of cigarettes, tobacco products, and electronic
smoking devices [are preempted, and existing local laws and regulations conflicting] that conflict with this chapter are [null and] void; provided that this subsection shall not prohibit a county from enacting ordinances more stringent than this chapter.

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

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

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

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

INTRODUCED BY:
Report Title:
Smoking; Public Health; Preemption; Local Regulation

Description:
Limits the State's preemption of local ordinances that regulate the sale of cigarettes, tobacco products, and electronic smoking devices to allow the counties to enact ordinances more stringent than state law.

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