A BILL FOR AN ACT

RELATING TO CIGARETTES.

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

PART I

SECTION 1. The legislature finds that the cigarette is considered the deadliest artifact in human history. The cigarette is an unreasonably dangerous and defective product, killing half of its long-term users. Further, although the cigarette is addictive by design due to the presence of nicotine, the tobacco industry has further manipulated the design of cigarettes in order to increase cigarette addiction and habituation.

The legislature also finds that smoking has killed one hundred million people in the twentieth century and is likely to kill one billion people in the twenty-first century. As of 2013, smoking has killed about six million people worldwide per year, with hundreds of thousands of these deaths occurring in the United States alone. In Hawaii, cigarettes have caused more preventable disease, death, and disability than any other health issue, each year claiming the lives of more than one thousand...
four hundred adults and contributing to more than twenty
thousand premature deaths of minors.

The legislature recognizes that the United States Food and
Drug Administration has been given expanded powers to deal with
cigarettes and tobacco products, but has also been specifically
prohibited from increasing the minimum age for tobacco
purchases. Further, the legislature acknowledged that because
young smokers are more easily addicted and habituated to
cigarettes, in 2018, the State banned the sales of cigarettes to
those under twenty-one years of age.

The legislature finds that there are currently an estimated
one hundred fifty thousand adult smokers in the State. Studies
have shown that cigarette smokers who quit smoking cigarettes by
the time they reach thirty or even forty years of age have a
greatly increased chance at having a normal lifespan. The
legislature notes that quitting at fifty or sixty years of age
has a smaller effect, but ultimately does help to lengthen an
individual's lifespan by six or four years, respectively. The
legislature also finds that it is difficult for many smokers to
quit smoking, despite a willingness to quit and that most
smokers regret ever starting to smoke. This inability of a
smoker to quit smoking should be viewed as the result of the carefully crafted power of the cigarette to create an addiction in its users rather than as a weakness or failing on the part of the smoker.

The legislature finds that the State is authorized to increase the minimum age to purchase cigarettes, and that increasing the minimum age could be effective in eventually eradicating the sale of cigarettes. The legislature believes that banning the sales of cigarettes should be viewed as a good faith effort to free smokers from the enslavement of this powerful addiction and not an infringement on individual liberties.

The legislature also finds that the State is suffering from its own addiction to cigarettes in the form of the large sums of money that the State receives from state cigarette sales taxes, with the tax revenues recently reaching more than $100,000,000 per year. Therefore, while it would be ideal and would save more lives to ban the sale of cigarettes to all ages immediately, the legislature believes that a more gradual ban, focused initially on younger age groups most likely to benefit
from a ban on cigarette sales, will allow the State to be weaned from this addiction and find sources to replace these funds.

The legislature further finds that as the disproportionate use of cigarettes by marginalized populations increases, the individuals and organizations responsible for establishing health policies, research priorities, and statutory initiatives may begin to neglect the issue.

The legislature agrees with the Australian Minister for health that "[w]e are killing people by not acting". Although the deaths caused by cigarettes may not legally constitute murders, the legislature believes that the State's lack of action to prevent these deaths by banning the sale of cigarettes could, and perhaps should, be considered the moral equivalent to murder, or at the very least, of being an accessory to murder.

The legislature believes that the best way to ban cigarettes is to gradually increase the minimum age of persons to whom cigarettes may be legally sold over the course of five years. Previous efforts to eliminate cigarette smoking has led the State to increase taxes, the revenues of which currently support important functions. Because these revenues will need time to be replaced, the legislature believes that a gradual ban
is the best method to allow for the necessary adjustment of
revenue sources.

The legislature further finds that while other combustible
tobacco products such as cigars are also harmful, smoke from
these products are usually not inhaled and they are therefore
less harmful than cigarettes. The legislature also finds that
non-combustible tobacco products are generally less harmful than
cigarettes. Further, e-cigarettes differ from regular
cigarettes in that they have a much lower carcinogenic potential
than cigarettes and are therefore also excluded from this Act.
Whether these products should eventually be banned is outside
the scope of this Act.

Accordingly, the purpose of this Act is to ban the sale of
cigarettes in the State by gradually increasing the minimum age
to purchase cigarettes, but not other tobacco products or
electronic smoking devices, over a period of five years.

PART II

SECTION 2. Section 712-1258, Hawaii Revised Statutes, is
amended by amending subsection (7) to read as follows:

"(7) For the purposes of this section:
"Electronic smoking device" means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, and any cartridge or other component of the device or related product.

"Tobacco product" (means):

(a) Means any product made or derived from tobacco that contains nicotine or other substances and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by other means. "Tobacco product" includes but is not limited to:

(b) Includes a [cigarette,] cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. "Tobacco product" does; and

(c) Does not include drugs, devices, or combination products approved for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act; or cigarettes."
SECTION 3. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

"§712- Cigarettes; persons under age. (1) Effective January 1, 2020, it shall be unlawful to sell or furnish cigarettes to a person under thirty years of age; provided that:

(a) Effective July 1, 2021, it shall be unlawful to sell or furnish cigarettes to a person under forty years of age;

(b) Effective July 1, 2022, it shall be unlawful to sell or furnish cigarettes to a person under fifty years of age;

(c) Effective July 1, 2023, it shall be unlawful to sell or furnish cigarettes to a person under sixty years of age; and

(d) Effective July 1, 2024, it shall be unlawful to sell or furnish cigarettes to a person under one hundred years of age;

provided further that the purchase or possession of cigarettes shall be unlawful for persons under twenty-one years of age, but
shall not be unlawful for persons twenty-one years of age or
older.

(2) All persons engaged in the retail sale of cigarettes
shall check the identification of cigarette purchasers to
establish the age of the purchaser if the purchaser reasonably
appears to be under the minimum age.

(3) It shall be an affirmative defense that the seller of
cigarettes to a person under the minimum age in violation of
this section had requested, examined, and reasonably relied upon
a photographic identification from the person establishing that
person's age as at the minimum age prior to selling the person
cigarettes. The failure of a seller to request and examine
photographic identification from a person under the minimum age
prior to the sale of cigarettes to the person shall be construed
against the seller and form a conclusive basis for the seller's
violation of this section.

(4) Effective January 1, 2020, signs using the statement,
"The sale of cigarettes to persons under the age of thirty is
prohibited", shall be posted on or near any vending machine that
dispenses cigarettes in letters at least one-half inch high and
at or near the point of sale of any other location where
cigarettes are sold in letters at least one-half inch high; provided that:

(a) Effective July 1, 2021, the signs shall instead read "The sale of cigarettes to persons under the age of forty is prohibited";

(b) Effective July 1, 2022, the signs shall instead read "The sale of cigarettes to persons under the age of fifty is prohibited";

(c) Effective July 1, 2023, the signs shall instead read "The sale of cigarettes to persons under the age of sixty is prohibited"; and

(d) Effective July 1, 2024, the signs shall instead read "The sale of cigarettes to persons under the age of one hundred is prohibited".

(5) Any person who violates subsection (1) or (4), shall be fined $500 for the first offense. Any subsequent offenses shall subject the person to a fine not less than $500 nor more than $2,000. The procedures set forth in chapter 712A shall not apply to this subsection.

(6) For the purposes of this section:

"Cigarette":

"Cigarette":
(a) Means either:

(i) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(ii) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (a); and

(b) Does not include:

(i) Other products containing tobacco, including but not limited to cigars, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device; or

(ii) Drugs, devices, or combination products approved for sale by the United States Food and Drug Administration, as those terms are defined in the federal Food, Drug, and Cosmetic Act.

"Minimum age" means the minimum age for a person to lawfully purchase or possess cigarettes as set forth in subsection (1)."
SECTION 4. This part does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

PART III

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

SECTION 6. This Act shall take effect on January 1, 2020.

INTRODUCED BY:

[Signatures]

JAN 24 2019
Report Title:
Cigarettes; Displays; Sales; Minimum Age

Description:
Progressively bans the sale of cigarettes by raising the minimum age of persons to whom cigarettes may be legally sold to 30 years of age in 2020, 40 years of age in 2021, 50 years of age in 2022, 60 years of age in 2023, and then 100 years of age in 2024.

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