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# 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 a study published by  
2 Theodore Slotkin, a neuroscientist at Duke University,  
3 demonstrates that nicotine has a similarly harmful effect on  
4 developing brains as chlorpyrifos, a chemical agent used in  
5 pesticides that was banned in the State by Act 45, Session Laws  
6 of Hawaii 2018. The legislature further finds that exposure to  
7 nicotine in utero can cause serious harm to children, ranging  
8 from death due to sudden infant death syndrome to learning and  
9 behavioral problems later in life. In recognition of the damage  
10 that nicotine can inflict on developing brains, Hawaii was the  
11 first state to raise the legal smoking age to twenty-one in  
12 2016.

13           In 2013, the federal Food and Drug Administration  
14 contracted with the Institute of Medicine to convene a committee  
15 to study the impact of raising the minimum age for purchase of  
16 tobacco products to either twenty-one or twenty-five years. In  
17 its study, the Institute of Medicine found that raising the



1 minimum age to twenty-five would lead to a significant decrease  
2 in smoking prevalence as well as substantial reductions in  
3 smoking-related mortality.

4 The legislature finds that all tobacco products, including  
5 electronic smoking devices, severely contribute to the injurious  
6 health burdens currently harming our State and country.

7 Furthermore, the legislature finds that smoking has reached  
8 epidemic proportions and, despite efforts to reverse smoking  
9 trends, the problem gets worse each year. Ensuring the quality  
10 of health, life, and opportunity for society today, and for  
11 future generations, is a great benefit to public health and a  
12 vital public necessity.

13 According to the federal Centers for Disease Control and  
14 Prevention, cigarette smoking is the leading preventable cause  
15 of death in the United States. With more than four hundred  
16 eighty thousand deaths due to smoking each year in the United  
17 States, approximately one in five deaths are caused by  
18 cigarettes annually, equaling to around one thousand three  
19 hundred deaths every day. More than sixteen million Americans  
20 are living with a disease caused by cigarette smoking alone, and  
21 life expectancy for smokers is at least ten years shorter than



1 for non-smokers. For every person who dies because of smoking,  
2 at least thirty people live with a serious smoking-related  
3 illness.

4 In 2004, the United States Surgeon General's report  
5 concluded that smoking causes many diseases and other adverse  
6 effects such as: cancer, heart disease, lung diseases, diabetes,  
7 and chronic obstructive pulmonary disease, which includes  
8 emphysema and chronic bronchitis. Smoking also increases risk  
9 for tuberculosis, certain eye diseases, and problems of the  
10 immune system, including rheumatoid arthritis.

11 The American Cancer Society reports that pregnant women who  
12 smoke risk the health and lives of their unborn babies. The  
13 nicotine, carbon monoxide, and other toxins in tobacco smoke  
14 enter the mother's bloodstream, go into the baby's body, and can  
15 keep the baby from getting the key nutrients and oxygen it needs  
16 to grow and develop. Almost every developing organ system is  
17 affected by the chemicals in tobacco smoke. This increases the  
18 risk of serious complications such as miscarriage, premature  
19 delivery, stillbirth, infant death, low birth weight, smaller  
20 head circumference, slightly higher risk of heart defects, cleft  
21 lip or palate, and hearing problems.



1           Some research has also suggested that children whose  
2 mothers smoked while pregnant or who have been exposed to  
3 secondhand smoke, even in small amounts, have a higher risk for:  
4 having attention-deficit/hyperactivity disorder (ADHD); being  
5 slower learners in school; being more likely to have high blood  
6 pressure, asthma, ear infections, tonsillitis, or cavities;  
7 having impaired lung function; being overweight or obese  
8 compared to children of non-smokers; and being more likely to  
9 smoke when they get older.

10           Many people who wish to quit smoking have turned to  
11 electronic smoking devices. The federal Centers for Disease  
12 Control and Prevention reports that although the aerosol of  
13 electronic smoking devices generally has fewer harmful  
14 substances than cigarette smoke, electronic smoking devices and  
15 other products containing nicotine are not safe to use during  
16 pregnancy, and quitting all forms of tobacco products, including  
17 electronic smoking devices, is the best choice for pregnant  
18 women and their babies. The federal Centers for Disease Control  
19 and Prevention further reports that most smokers become addicted  
20 to nicotine, a drug that is found naturally in tobacco, and that  
21 more people in the United States are addicted to nicotine than



1 to any other drug. Research suggests that nicotine may be as  
2 addictive as heroin, cocaine, or alcohol, thus, explaining why  
3 quitting smoking is very hard and may require several attempts.  
4 People who stop smoking often start again because of withdrawal  
5 symptoms, stress, and weight gain. According to the American  
6 Addiction Centers, nicotine is one of the top five hardest drugs  
7 to quit. Nicotine is a health danger for pregnant women and  
8 developing babies and can damage a developing baby's brain and  
9 lungs. Also, some of the flavorings used in electronic smoking  
10 devices may be harmful to a developing baby.

11 The American Pregnancy Association reports that between  
12 twelve to twenty per cent of pregnant women smoke, putting  
13 themselves and their babies at risk, and that over one thousand  
14 babies in the United States die each year because their mothers  
15 smoked while pregnant. The legislature is cognizant that these  
16 disturbing statistics reflect only the results disclosed, and  
17 that the actual percentage of women who smoke while pregnant as  
18 well as the number of babies negatively affected in utero by  
19 their mothers who smoked may be significantly higher.

20 Admittedly, nearly seven in ten adult cigarette smokers  
21 want to stop smoking and more than five in ten adult cigarette



1 smokers have tried to quit smoking in the past year. The  
2 thirty-first tobacco-related report by the United States Office  
3 of the Surgeon General includes a description of tobacco use  
4 amongst young adults ages nineteen through twenty-five,  
5 including the epidemiology, causes, and health effect of tobacco  
6 use and interventions to prevent it. Scientific evidence  
7 contained in the reports supports the fact that prevention  
8 efforts must include focus on young adults eighteen through  
9 twenty-five years old. According to the report, almost no one  
10 starts smoking after age twenty-five. Nearly nine out of ten  
11 smokers started smoking by age eighteen, and ninety-nine per  
12 cent started by age twenty-six. Progression from occasional to  
13 daily smoking almost always occurs before age twenty-six.

14 Accordingly, the legislature finds that it is essential for  
15 the public health, safety, and welfare of the State to increase  
16 the minimum age at which one can purchase or possess any tobacco  
17 product, including electronic smoking devices. Therefore, the  
18 purpose of this Act is to reduce the harmful effects that  
19 smoking has on society by prohibiting the sale or furnishing of  
20 tobacco products, including electronic smoking devices, to  
21 persons under twenty-five years of age.



1 SECTION 2. Section 712-1258, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§712-1258 Tobacco products and electronic smoking  
4 devices; persons under [~~twenty-one~~] twenty-five years of age.

5 (1) It shall be unlawful to sell or furnish a tobacco product  
6 in any shape or form or an electronic smoking device to a person  
7 under [~~twenty-one~~] twenty-five years of age.

8 (2) All persons engaged in the retail sale of tobacco  
9 products or electronic smoking devices shall check the  
10 identification of tobacco product or electronic smoking device  
11 purchasers to establish the age of the purchaser if the  
12 purchaser reasonably appears to be under [~~twenty-seven~~]  
13 thirty-five years of age.

14 (3) It shall be an affirmative defense that the seller of  
15 a tobacco product or an electronic smoking device to a person  
16 under [~~twenty-one~~] twenty-five years of age in violation of this  
17 section had requested, examined, and reasonably relied upon a  
18 photographic identification from the person establishing that  
19 person's age as at least [~~twenty-one~~] twenty-five years of age  
20 prior to selling the person a tobacco product or an electronic  
21 smoking device. The failure of a seller to request and examine



1 photographic identification from a person under [~~twenty-one~~  
2 twenty-five years of age prior to the sale of a tobacco product  
3 or an electronic smoking device to the person shall be construed  
4 against the seller and form a conclusive basis for the seller's  
5 violation of this section.

6 (4) Signs using the statement, "The sale of tobacco  
7 products or electronic smoking devices to persons under  
8 [~~twenty-one~~ twenty-five is prohibited", shall be posted on or  
9 near any vending machine in letters at least one-half inch high  
10 and at or near the point of sale of any other location where  
11 tobacco products or electronic smoking devices are sold in  
12 letters at least one-half inch high.

13 (5) It shall be unlawful for a person under [~~twenty-one~~  
14 twenty-five years of age to purchase or possess any tobacco  
15 product or electronic smoking device, as those terms are defined  
16 in subsection (7). This provision does not apply if a person  
17 under the age of [~~twenty-one,~~ twenty-five, or eighteen with  
18 parental authorization, is participating in a controlled  
19 purchase as part of a law enforcement activity or a study  
20 authorized by the department of health under the supervision of  
21 law enforcement to determine the level of incidence of tobacco



1 or electronic smoking devices sales to persons under  
2 [~~twenty-one~~] twenty-five years of age.

3 (6) Any person who violates subsection (1) or (4), or  
4 both, shall be fined \$500 for the first offense. Any subsequent  
5 offenses shall subject the person to a fine not less than \$500  
6 nor more than \$2,000. Any person under [~~twenty-one~~] twenty-five  
7 years of age who violates subsection (5) shall be fined [~~\$10~~]  
8 \$50 for the first offense. Any subsequent offense shall subject  
9 the violator to a fine of [~~\$50~~] \$100, no part of which shall be  
10 suspended, or the person shall be required to perform not less  
11 than forty-eight hours nor more than seventy-two hours of  
12 community service during hours when the person is not employed  
13 and is not attending school. Any tobacco product or electronic  
14 smoking device, as those terms are defined in subsection (7), in  
15 the person's possession at the time of violation of subsection  
16 (5) shall be seized, summarily forfeited to the State, and  
17 destroyed by law enforcement following the conclusion of an  
18 administrative or judicial proceeding finding that a violation  
19 of subsection (5) has been committed. The procedures set forth  
20 in chapter 712A shall not apply to this subsection.

21 (7) For the purposes of this section:



1 "Electronic smoking device" means any electronic product  
2 that can be used to aerosolize and deliver nicotine or other  
3 substances to the person inhaling from the device, including but  
4 not limited to an electronic cigarette, electronic cigar,  
5 electronic cigarillo, or electronic pipe, and any cartridge or  
6 other component of the device or related product.

7 "Tobacco product" means any product made or derived from  
8 tobacco that contains nicotine or other substances and is  
9 intended for human consumption or is likely to be consumed,  
10 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or  
11 ingested by other means. "Tobacco product" includes but is not  
12 limited to a cigarette, cigar, pipe tobacco, chewing tobacco,  
13 snuff, snus, or an electronic smoking device. "Tobacco product"  
14 does not include drugs, devices, or combination products  
15 approved for sale by the United States Food and Drug  
16 Administration, as those terms are defined in the Federal Food,  
17 Drug, and Cosmetic Act."

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



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

3 SECTION 5. This Act shall take effect on July 1, 2050.



**Report Title:**

Tobacco; Tobacco Products; Electronic Smoking Devices; Minimum Age; Tobacco Sales

**Description:**

Prohibits the sale or furnishing of tobacco products, including electronic smoking devices, to persons under twenty-five years of age. Increases the minimum age from twenty-one years of age to twenty-five years of age for purchase and possession of tobacco products, including electronic smoking devices and increases fines. Takes effect on 7/1/2050. (HD1)

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