RELATING TO CIGARETTES.

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

SECTION 1. (a) The legislature finds that a study published by Theodore Slotkin, a neuroscientist at Duke University, demonstrates that nicotine has a similarly harmful effect on developing brains as chlorpyrifos, a chemical agent used in pesticides that was banned in the State by Act 45, Session Laws of Hawaii 2018. The legislature further finds that exposure to nicotine in utero can cause serious harm to children, ranging from death due to Sudden Infant Death Syndrome to learning and behavioral problems later in life. In recognition of the damage that nicotine can inflict on developing brains, Hawaii was the first state to raise the legal smoking age to twenty-one in 2016.

In 2013, the Food and Drug Administration contracted with the Institute of Medicine to convene a committee to study the impact of raising the minimum age for purchase of tobacco products to either twenty-one or twenty-five years. In their study, the Institute of Medicine found that raising the minimum
age to twenty-five would lead to a significant decrease in
smoking prevalence as well as substantial reductions in smoking-
related mortality.

(b) 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 and 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 further finds that electronic cigarettes are also an increasing public health concern. The American Lung Association recently stated that "we are at risk of losing another generation to tobacco-caused diseases as the result of the e-cigarettes". A recent study from the University of North Carolina showed that vaping electronic cigarettes, even in small doses, is likely to expose users to high level of toxins. Inhaling these toxins can cause "irreversible lung damage and lung diseases".

The legislature additionally finds that the State is authorized to increase the minimum age to purchase cigarettes and electronic cigarettes, and that increasing the minimum age could be effective in eventually eradicating the sale of cigarettes and electronic cigarettes. The legislature believes that banning the sales of both cigarettes and electronic cigarettes should be viewed as a good faith effort to free smokers and vapers 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 and electronic cigarettes in the form of the large sums of tax revenues that the State receives from cigarette and electronic cigarette sales, 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 and electronic cigarettes to all ages immediately, the legislature believes that a more gradual ban, focused initially on younger age groups that are most likely to benefit from a ban on cigarette and electronic cigarette sales from a health perspective, will allow the State to be weaned from that source of tax revenues and determine a way to replace the lost revenues.

The legislature further finds that as the disproportionate use of cigarettes and electronic 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 and electronic 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 and electronic 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 and electronic cigarettes is to gradually increase the minimum age of persons to whom cigarettes and electronic 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. 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 and electronic cigarettes in the State by gradually increasing the minimum age to purchase cigarettes and electronic cigarettes, but not other tobacco products, over a period of five years.

SECTION 2. 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; electronic cigarettes; persons under age. (1) Effective January 1, 2021, it shall be unlawful to sell or furnish cigarettes or electronic cigarettes to a person under thirty years of age; provided that:

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

(b) Effective July 1, 2023, it shall be unlawful to sell or furnish cigarettes or electronic cigarettes to a person under fifty years of age;

(c) Effective July 1, 2024, it shall be unlawful to sell or furnish cigarettes or electronic cigarettes to a person under sixty years of age; and
(d) Effective July 1, 2025, it shall be unlawful to sell or furnish cigarettes or electronic cigarettes to a person under one hundred years of age; provided further that the purchase or possession of cigarettes or electronic 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 or electronic cigarettes shall check the identification of cigarette or electronic 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 or electronic 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 before selling the person cigarettes or electronic cigarettes. The failure of a seller to request and examine photographic identification from a person under the minimum age before the sale of cigarettes or electronic
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, 2021, signs using the statement,
"The sale of cigarettes or electronic cigarettes to persons
under the age of thirty is prohibited", shall be posted on or
near any vending machine that dispenses cigarettes or electronic
cigarettes in letters at least one-half inch high and at or near
the point of sale of any other location where cigarettes or
electronic cigarettes are sold in letters at least one-half inch
high; provided that:

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

(b) Effective July 1, 2023, the signs shall instead read
"The sale of cigarettes or electronic cigarettes to
persons under the age of fifty is prohibited";

(c) Effective July 1, 2024, the signs shall instead read
"The sale of cigarettes or electronic cigarettes to
persons under the age of sixty is prohibited"; and
(d) Effective July 1, 2025, the signs shall instead read
"The sale of cigarettes or electronic 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":

(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 this paragraph; 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 with the exception of an electronic cigarette; 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.

"Electronic cigarette" means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling from the device and any cartridge or other component of the device or related product.

"Minimum age" means the minimum age for a person to lawfully purchase or possess cigarettes as set forth in subsection (1)."

SECTION 3. 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 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 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[.];

cigarettes; or electronic cigarettes."
SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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, 2021.
Report Title:
Cigarettes; Electronic Cigarettes; Displays; Sales; Minimum Age

Description:
Bans the sale of cigarettes and electronic cigarettes progressively by raising the minimum age of persons to whom cigarettes and electronic cigarettes may be legally sold to 30 years of age in 2021, 40 years of age in 2022, 50 years of age in 2023, 60 years of age in 2024, and then 100 years of age in 2025. Effective January 1, 2021.

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