
A BILL FOR AN ACT

RELATING TO TOBACCO.

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

1 PART I

2 SECTION 1. The legislature finds that there has been a
3 proliferation of flavored tobacco products in recent years.
4 Many of these products contain fruit, chocolate, honey, candy,
5 mint, cocoa, dessert, herb, spice, or other flavors that are
6 particularly attractive to children. According to public health
7 experts, children are more likely to choose flavored tobacco
8 when they start smoking or use other tobacco products, in part,
9 because the product names for flavored tobacco products are
10 similar to product names for candy, drinks, and other products
11 marketed directly to children.

12 In October 2006, R.J. Reynolds Tobacco Company and the
13 attorneys general of thirty-eight states, including Hawaii,
14 entered into a settlement agreement that ends the sale of candy,
15 fruit, and alcohol-flavored cigarettes manufactured and sold by
16 the company. The states had asserted that Reynolds was
17 violating the 1998 tobacco Master Settlement Agreement that



1 prohibits targeting youth through its advertising, marketing and
2 promotion of its flavored cigarettes. No agreement has been
3 reached with other tobacco manufacturers.

4 The legislature also finds that these products are being
5 manufactured by other tobacco companies, which increases the
6 incidence of tobacco use among children and that the earlier an
7 individual begins using tobacco products, the more likely the
8 individual will become addicted to and use them throughout the
9 person's lifetime. Thus, flavored tobacco products result in
10 greater tobacco use, increased addiction, greater incidence of
11 smoking, other tobacco-related illnesses and deaths, and higher
12 health care costs.

13 The purpose of this Act is to protect public health by
14 prohibiting the sale and distribution of flavored tobacco
15 products.

16 SECTION 2. The Hawaii Revised Statutes is amended by
17 adding a new chapter to be appropriately designated and to read
18 as follows:

19 "CHAPTER

20 FLAVORED TOBACCO PRODUCTS

21 § -1 Definitions. As used in this chapter, unless the
22 context otherwise requires:



1 "Characterizing flavor" means a distinguishable taste or
2 aroma, other than tobacco, menthol, or clove, imparted either
3 prior to or during consumption.

4 "Chewing tobacco" means loose tobacco or a flat compressed
5 cake of tobacco, a portion of which is inserted into the mouth.

6 "Cigarette" means any product that contains nicotine, is
7 intended to be burned or heated under ordinary condition of use,
8 and consists of or contains:

- 9 (1) Any roll of tobacco wrapped in paper or in any
10 substance not containing tobacco;
- 11 (2) Tobacco in any form that is functional in the product
12 which, because of its appearance, the type of tobacco
13 used in the filler or its packaging and labeling is
14 likely to be offered to or purchased by consumers as a
15 cigarette; or
- 16 (3) Any roll of tobacco wrapped in any substance
17 containing tobacco which, because of its appearance,
18 the type of tobacco used in the filler, or its
19 packaging and labeling, is likely to be offered to or
20 purchased by consumers as a cigarette described in
21 paragraph (1) of this definition.



1 The term "cigarette" includes "roll-your-own" which enables
2 consumers to make their own product.

3 "Component parts" includes but is not limited to the
4 tobacco, filter, and paper in a cigarette.

5 "Constituent" includes a smoke constituent.

6 "Smokeless tobacco" means chewing tobacco or tobacco snuff.

7 "Tobacco snuff" means a small amount of shredded, powdered,
8 or pulverized tobacco that may be inhaled through the nostrils,
9 chewed, or held in the mouth of an individual user.

10 **§ -2 Prohibition.** No person shall sell, offer for sale,
11 or distribute in this state or to any person in this state any
12 cigarette, smokeless tobacco product, or any component part
13 thereof containing a natural or artificial constituent or
14 additive that causes the cigarette or smokeless tobacco product
15 to have a characterizing flavor.

16 **§ -3 Remedies.** The attorney general may institute a
17 civil action in the name of the State in the circuit court for
18 an injunction prohibiting a violation of this chapter. If the
19 court grants an injunction in accordance with this section, the
20 State shall not be required to furnish a bond. The court, upon
21 notice to the defendant in compliance with the Hawaii rules of
22 civil procedure and upon proof that the defendant has violated



1 this chapter, may enjoin further sale, offering for sale, or
2 distribution by the defendant. The court may impose a civil
3 penalty in an amount not to exceed \$5,000 for each violation.
4 The attorney general may recover costs and disbursements,
5 including costs of investigation and reasonable attorney's fees.
6 Nothing in this section shall preclude the State or any other
7 person from pursuing any other claims, remedies, or actions
8 available by law."

9 SECTION 3. The department of the attorney general shall
10 provide annual reports until 2010 to the legislature not less
11 than twenty days prior to the beginning of the regular session
12 of the legislature, beginning with the regular session of 2009.
13 The report shall include data on:

- 14 (1) Annual sales of flavored tobacco products sold in the
15 state;
- 16 (2) Revenues generated by the sale of flavored tobacco
17 products; and
- 18 (3) Under-age people using flavored tobacco products.

19 SECTION 4. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun, before its effective date.



1 PART II

2 SECTION 5. Section 328J-16, Hawaii Revised Statutes, is
3 amended to read as follows:

4 " ~~[+]~~ §328J-16 ~~[+]~~ Cigarette sales from vending machines,
5 self-service displays, and by lunch wagons prohibited. (a) The
6 sale or distribution ~~[at no charge]~~ of cigarettes by the
7 following methods is prohibited:

8 (1) From cigarette vending machines, unless the vending
9 machine is located in a bar, cabaret, or any
10 establishment for which the minimum age for admission
11 is eighteen; ~~[or]~~

12 (2) From a lunch wagon engaging in any sales activity
13 within one thousand feet of any public or private
14 elementary or secondary school grounds ~~[+]~~; or

15 (3) From a self-service display, except a cigarette
16 vending machine as provided in this subsection.

17 (b) Violations of subsection (a), including placement of a
18 cigarette vending machine in a location other than a bar,
19 cabaret, or any establishment for which the minimum age for
20 admission is eighteen, are subject to a fine of up to ~~[\$1,000~~
21 ~~per day for each violation.]~~ \$ _____ for the first offense. Any
22 subsequent offenses at the same location within _____ shall



1 subject the person to a fine of not less than \$ _____ or more
2 than \$ _____.

3 (c) As used in this section:

4 "Cigarette vending machine" means a self-service device
5 that dispenses cigarettes, cigars, tobacco, or any other product
6 containing tobacco[-], except a vending machine that dispenses
7 cigarettes, cigars, tobacco, or any other product containing
8 tobacco through the operation of a device that requires a
9 salesperson to control the dispensation of the product.

10 "Lunch wagon" means a mobile vehicle designed and
11 constructed to transport food and from which food is sold to the
12 general public and includes but is not limited to manapua
13 trucks.

14 "Self-service display" means a display that contains
15 cigarettes and is located in an area openly accessible to
16 customers and from which customers can readily access cigarettes
17 without the assistance of a salesperson. A display case that
18 holds cigarettes from behind locked doors shall not constitute a
19 self-service display for purposes of this section.

20 "Sell" or "sale" means to solicit and receive an order for;
21 to have, keep, offer, or expose for sale; to deliver for value



1 or in any other manner than purely gratuitously; to peddle; to
2 keep with intent to sell; or to traffic in."

3 PART III

4 SECTION 5. Section 328J-2, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[+]§328J-2[+] Prohibition on property and in facilities
7 owned by the State or the counties. Smoking shall be prohibited
8 on all public beaches, in all public parks, and in all enclosed
9 or partially enclosed areas, including buildings and vehicles
10 owned, leased, or operated by the State or any county."

11 PART IV

12 SECTION 6. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect on January 1, 2010.



Report Title:

Flavored Tobacco; Health

Description:

Prohibits the sale and distribution of flavored tobacco products. Prohibits sale of cigarettes from self-service displays. Defines "self-service displays". Clarifies definition of "cigarette vending machine". Changes amount of fine from \$1,000 per day to unspecified amounts for first and subsequent offenses. Prohibits smoking statewide on public beaches and in public parks. (HB527 HD1)

