

JAN 16 2014

A BILL FOR AN ACT

RELATING TO FLAVORED TOBACCO PRODUCTS.

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

1 SECTION 1. The legislature finds that documents obtained
2 during litigation against the tobacco industry reveal that
3 tobacco companies have used fruit, candy, and alcohol flavors as
4 a way to target the tobacco companies' products to youth.

5 The legislature further finds that in October 2006, R.J.
6 Reynolds Tobacco Company and the attorneys general of thirty-
7 eight states, including Hawaii, entered into a settlement
8 agreement that ended the sale of fruit, candy, and alcohol
9 flavored cigarettes manufactured and sold by the company. The
10 states had asserted that R.J. Reynolds was in violation of the
11 1998 tobacco master settlement agreement's prohibition on youth
12 targeting through the company's advertising, marketing, and
13 promotion of its flavored cigarettes.

14 Although no agreement was reached with the other tobacco
15 manufacturers, the federal Family Smoking Prevention and Tobacco
16 Control Act of 2009 prohibited the manufacture and sale of
17 flavored cigarettes. However, there is no comparable federal
18 prohibition for other flavored tobacco products.



1 The legislature additionally finds that marketing and
2 public health research have shown that flavored tobacco products
3 appeal to youth. The younger individuals are when they begin to
4 use tobacco, the more likely they are to become addicted to
5 tobacco products. Public health concerns have also been raised
6 about the growing popularity and targeted marketing of menthol
7 tobacco products. Public health organizations have expressed
8 similar concerns about electronic smoking devices, whose refill
9 cartridges often come in hundreds of kid-friendly fruit and
10 candy flavors - the same flavors that are legally prohibited in
11 conventional cigarettes.

12 Given the significant threat to public health that flavored
13 tobacco products, including menthol tobacco products and
14 electronic smoking devices, pose, many local and state
15 governments have considered efforts to regulate the sale of
16 flavored tobacco products. The legislature concludes that
17 Hawaii should also take steps to regulate these products.

18 Accordingly, the purpose of this Act is to prohibit the
19 sale, offering for sale, or distribution of any flavored tobacco
20 product, including menthol products and electronic smoking
21 devices, within the State.



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

4 "CHAPTER

5 FLAVORED TOBACCO PRODUCTS

6 § -1 Definitions. As used in this chapter, unless the
7 context otherwise requires:

8 "Characterizing flavor" means a distinguishable or
9 distinctive natural or artificial taste, flavor, smell, or
10 aroma, other than tobacco, that emanates from or is imparted by
11 the tobacco product, component part of the tobacco product, or
12 tobacco product's smoke or vapor at any time prior to or during
13 consumption. The term "characterizing flavor" includes menthol.

14 "Cigarette" means any product that contains nicotine, is
15 intended to be burned or heated under ordinary conditions of
16 use, and consists of or contains:

- 17 (1) Any roll of tobacco wrapped in paper or in any
18 substance not containing tobacco;
- 19 (2) Tobacco in any form that is functional in the product,
20 which, because of its appearance, the type of tobacco
21 used in the filler, or its packaging and labeling, is



1 likely to be offered to or purchased by consumers as a
2 cigarette; or

3 (3) Any roll of tobacco wrapped in any substance
4 containing tobacco which, because of its appearance,
5 the type of tobacco used in the filler, or its
6 packaging and labeling, is likely to be offered to or
7 purchased by consumers as a cigarette described in
8 paragraph (1) of this definition.

9 The term "cigarette" includes "roll-your-own" tobacco that
10 enables consumers to make their own product.

11 "Component part" means any element of a tobacco product,
12 including but not limited to the tobacco, filter, paper,
13 electronic smoking device cartridge or refill cartridge, or
14 natural or artificial flavoring device or substance.

15 "Constituent" means any ingredient, substance, chemical, or
16 compound, other than tobacco, water, or reconstituted tobacco
17 sheet, that is added by the manufacturer to a tobacco product
18 during the processing, manufacturing, or packaging of the
19 tobacco product. The term "constituent" includes a smoke
20 constituent.

21 "Electronic smoking device" has the same meaning as in
22 section 709-908.



1 "Flavored tobacco product" means any tobacco product or any
2 component part of the tobacco product that contains a
3 constituent that imparts a characterizing flavor.

4 "Smoke constituent" means any chemical or chemical compound
5 in mainstream or sidestream tobacco smoke that transfers from
6 any component part of the tobacco product to the smoke or is
7 formed by the combustion or heating of tobacco, additives, or
8 other component part of the tobacco product.

9 "Tobacco product" means tobacco in any form, other than
10 cigarettes as defined in this chapter, that is prepared or
11 intended for consumption or for personal use by humans,
12 including cigars and any substitutes of cigars other than
13 cigarettes that bear the semblance of cigars, snuff, chewing or
14 smokeless tobacco, and smoking or pipe tobacco. For purposes of
15 this chapter, "tobacco product" includes electronic smoking
16 devices.

17 **§ -2 Prohibition.** Beginning on January 1, 2015, no
18 person shall sell, offer for sale, or otherwise distribute any
19 flavored tobacco product within the State.

20 **§ -3 Remedies.** (a) The attorney general may institute
21 a civil action in the name of the State in the circuit court for
22 an injunction prohibiting a violation of this chapter. If the



1 court grants an injunction in accordance with this section, the
2 State shall not be required to furnish a bond. The court, upon
3 notice to the defendant in compliance with the Hawaii rules of
4 civil procedure and upon proof that the defendant has violated
5 this chapter, may enjoin further sale, offering for sale, or
6 distribution by the defendant.

7 (b) Any person who violates this chapter shall be fined
8 \$500 for the first offense. Any subsequent offense shall
9 subject the person to a fine not less than \$500 nor more than
10 \$2,000.

11 (c) The attorney general may recover costs and
12 disbursements, including costs of investigation and reasonable
13 attorney's fees.

14 (d) Nothing in this section shall preclude the State or
15 any other person from pursuing any other claims, remedies, or
16 actions available by law.

17 **§ -4 Presumption.** A public statement or claim made or
18 disseminated by the manufacturer of a tobacco product, or by any
19 person authorized or permitted by the manufacturer to make or
20 disseminate a public statement or claim, that a tobacco product
21 has or produces a characterizing flavor shall be prima facie



1 evidence that the tobacco product is a flavored tobacco
2 product."

3 SECTION 3. If any provision of this Act, or the
4 application thereof to any person or circumstance, is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the Act that can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this Act are severable.

9 SECTION 4. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

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

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S.B. NO. 2222

Report Title:

Flavored Tobacco Products; Tobacco Products; Electronic Smoking Devices; Menthol; Penalties

Description:

Prohibits the sale, offering for sale, or distribution of any flavored tobacco product, including menthol products and electronic smoking devices, within the State beginning on January 1, 2015.

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