
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.

8 Given the significant threat to public health that flavored
9 tobacco products, including menthol tobacco products, pose, many
10 local and state governments have considered efforts to regulate
11 the sale of flavored tobacco products. The legislature
12 concludes that Hawaii should also take steps to regulate these
13 products.

14 Accordingly, the purpose of this Act is to prohibit the
15 sale, offering for sale, or distribution of any flavored tobacco
16 product, including menthol products, within the State.

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

20

"CHAPTER

21

FLAVORED TOBACCO PRODUCTS



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

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

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

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



1 purchased by consumers as a cigarette described in
2 paragraph (1) of this definition.

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

5 "Component part" means any element of a tobacco product,
6 including but not limited to the tobacco, filter, paper, or
7 natural or artificial flavoring device or substance.

8 "Constituent" means any ingredient, substance, chemical, or
9 compound, other than tobacco, water, or reconstituted tobacco
10 sheet, that is added by the manufacturer to a tobacco product
11 during the processing, manufacturing, or packaging of the
12 tobacco product. The term "constituent" includes a smoke
13 constituent.

14 "Flavored tobacco product" means any tobacco product or any
15 component part of the tobacco product that contains a
16 constituent that imparts a characterizing flavor.

17 "Smoke constituent" means any chemical or chemical compound
18 in mainstream or sidestream tobacco smoke that transfers from
19 any component part of the tobacco product to the smoke or is
20 formed by the combustion or heating of tobacco, additives, or
21 other component part of the tobacco product.



1 "Tobacco product" means tobacco in any form, other than
2 cigarettes as defined in this chapter, that is prepared or
3 intended for consumption or for personal use by humans,
4 including cigars and any substitutes of cigars other than
5 cigarettes that bear the semblance of cigars, snuff, chewing or
6 smokeless tobacco, and smoking or pipe tobacco.

7 **§ -2 Prohibition.** Beginning on January 1, 2015, no
8 person shall sell, offer for sale, or otherwise distribute any
9 flavored tobacco product within the State.

10 **§ -3 Remedies.** (a) The attorney general may institute
11 a civil action in the name of the State in the circuit court for
12 an injunction prohibiting a violation of this chapter. If the
13 court grants an injunction in accordance with this section, the
14 State shall not be required to furnish a bond. The court, upon
15 notice to the defendant in compliance with the Hawaii rules of
16 civil procedure and upon proof that the defendant has violated
17 this chapter, may enjoin further sale, offering for sale, or
18 distribution by the defendant.

19 (b) Any person who violates this chapter shall be fined
20 \$500 for the first offense. Any subsequent offense shall
21 subject the person to a fine not less than \$500 nor more than
22 \$2,000.



1 (c) The attorney general may recover costs and
2 disbursements, including costs of investigation and reasonable
3 attorney's fees.

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

7 **§ -4 Presumption.** A public statement or claim made or
8 disseminated by the manufacturer of a tobacco product, or by any
9 person authorized or permitted by the manufacturer to make or
10 disseminate a public statement or claim, that a tobacco product
11 has or produces a characterizing flavor shall be prima facie
12 evidence that the tobacco product is a flavored tobacco
13 product."

14 SECTION 3. If any provision of this Act, or the
15 application thereof to any person or circumstance, is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

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



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

2



Report Title:

Flavored Tobacco Products; Tobacco Products; Menthol; Penalties

Description:

Prohibits the sale, offering for sale, or distribution of any flavored tobacco product, including menthol products, within the State beginning on January 1, 2015. (SD1)

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