
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 tobacco use remains
2 the leading cause of preventable disease and death in the United
3 States and in Hawaii. Tobacco use is a serious public health
4 problem in terms of the human suffering and loss of life it
5 causes, as well as the financial burden it imposes on society
6 and the State's healthcare system. Annually, \$526,000,000 in
7 health care costs are directly attributed to smoking in the
8 State.

9 The legislature also recognizes that ninety-five per cent
10 of all smokers start before the age of twenty-one. Eighty-one
11 per cent of youth who have ever used a tobacco product report
12 that the first tobacco product they used was flavored. Flavored
13 tobacco products promote youth initiation of tobacco use and
14 help young occasional smokers become daily smokers by reducing
15 or masking the natural harshness and taste of tobacco smoke,
16 thereby increasing the appeal of tobacco products.



1 The popularity of electronic cigarettes among youth is
2 concerning, as these products contain nicotine. The United
3 States Surgeon General noted in the 2016 report titled "E-
4 Cigarette Use Among Youth and Youth Adults" that "because the
5 adolescent brain is still developing, nicotine use during
6 adolescence can disrupt the formation of brain circuits that
7 control attention, learning, and susceptibility to addiction."

8 The legislature further finds that while there has been a
9 decline in the use of combustible cigarettes over the last
10 decade, there has been a dramatic increase in the use of
11 electronic smoking devices (ESDs) by Hawaii's youth. Vaping in
12 Hawaii has reached epidemic levels. Between 2011 to 2015, the
13 proportion of youth experimenting with ESDs increased six-fold
14 among middle school youth and four-fold among high school youth.
15 In 2017, twenty-seven per cent of middle school and forty-two
16 per cent of public high school students tried ESDs. Today,
17 sixteen per cent of middle school and more than a quarter of
18 high school students vape. Current use of ESDs by county is
19 even more problematic, with figures exceeding thirty per cent on
20 the islands of Hawaii, Maui, and Kauai. The fact that these
21 rates are higher than the national average and demonstrates a



1 disturbing trend of youth nicotine use and threatens the
2 historic decline achieved in combustible cigarette use.

3 The legislature further finds that a 2009 federal law, the
4 Family Smoking Prevention and Tobacco Control Act, prohibited
5 characterizing flavors, including fruit and candy flavorings, in
6 cigarettes but did not ban the use of characterizing flavors in
7 other tobacco products. Only cigarettes, roll-your-own tobacco,
8 and smokeless tobacco are subject to regulation under the
9 federal Act. The tobacco industry and electronic smoking device
10 industry have since significantly increased the introduction and
11 marketing of flavored non-cigarette tobacco products, especially
12 ESDs. It is no coincidence that the number of electronic
13 cigarette flavors have skyrocketed in recent years, with more
14 than 15,500 unique e-cigarette flavors identified in a 2018
15 study. Hawaii has experienced the heightened promotion of vape
16 products that offer candy and local flavors designed to appeal
17 to the State's youth, such as candy, fruit, chocolate, mint,
18 Kona coffee, Maui mango, Shaka strawberry, and Molokai hot
19 bread. Additionally, many of the packages are designed to look
20 like candies popular with children, such as Jolly Ranchers and



1 Sour Patch Kids. The legislature additionally finds that young
2 people are disproportionately using flavored tobacco products.

3 Given the significant threat to public health posed by
4 flavored tobacco products a growing number of jurisdictions,
5 including San Francisco, Berkeley, Chicago, Minneapolis, and
6 Providence, Rhode Island, have introduced and passed legislation
7 to regulate the sale of flavored tobacco products. The
8 legislature concludes that Hawaii should also take steps to
9 regulate these products to reduce tobacco-related health
10 disparities and address the youth vaping epidemic.

11 Accordingly, the purpose of this Act is to prohibit the
12 sale or distribution of all flavored tobacco products in the
13 State of Hawaii.

14 SECTION 2. Chapter 712, Hawaii Revised Statutes, is
15 amended by adding to part IV a new section to be appropriately
16 designated and to read as follows:

17 "§712- Sale of flavored tobacco products; mislabeling
18 as nicotine-free. (1) Beginning January 1, 2021, it shall be
19 unlawful for any retailer or any agents or employees of the
20 retailer to:



1 (A) Sell, offer for sale, or possess with the intent to
2 sell or offer for sale, a flavored tobacco product; or

3 (B) Mislabel as nicotine-free, or sell or market for sale
4 as nicotine-free, any e-liquid product that contains
5 nicotine.

6 (2) A statement or claim directed to consumers or the
7 public that the tobacco product has or produces a characterizing
8 flavor, including but not limited to text, color, or images on
9 the tobacco product's labeling or packaging that is used
10 explicitly or implicitly to communicate that the tobacco product
11 has a characterizing flavor made by a manufacturer or an agent
12 or employee of the manufacturer in the course of the person's
13 agency or employment, is prima facie evidence that the tobacco
14 product is a flavored tobacco product.

15 (3) Any flavored tobacco product found in the retailer's
16 possession that is in violation of this section shall be
17 considered contraband, promptly seized, summarily forfeited to
18 the State, destroyed by law enforcement following the conclusion
19 of an administrative or judicial proceeding finding that a
20 violation of this section has been committed, and shall not be
21 subject to the procedures set forth in chapter 712A.



1 (4) Any retailer and any agent or employee of the retailer
2 who violates this section shall be sentenced to a fine not
3 exceeding \$500. Any subsequent offenses shall subject the
4 offender to a fine of not less than \$500 nor more than \$2,000.

5 (5) Notwithstanding any other law to the contrary, any
6 county may adopt a rule or ordinance that places greater
7 restrictions on the access to flavored tobacco products than
8 provided for in this section. In the case of a conflict between
9 the restrictions in this section and any county rule or
10 ordinance regarding access to flavored tobacco products, the
11 more stringent restrictions shall prevail.

12 (6) For the purposes of this section:

13 "Characterizing flavor" means a distinguishable taste or
14 aroma, or both, other than the taste or aroma of tobacco or
15 menthol, imparted by a tobacco product or any byproduct produced
16 by the tobacco product. "Characterizing flavors" include but
17 are not limited to tastes or aromas relating to any candy,
18 chocolate, vanilla, honey, fruit, cocoa, coffee, dessert,
19 alcoholic beverage, mint, wintergreen, herb, or spice. A
20 tobacco product shall not be determined to have a characterizing
21 flavor solely because of the use of additives or flavorings or



1 the provision of ingredient information in the absence of a
2 distinguishable taste or aroma, or both.

3 "Cigarette" means any roll for smoking made wholly or in
4 part of tobacco, irrespective of size and shape and whether or
5 not the tobacco is flavored, adulterated, or mixed with any
6 other ingredient, the wrapper or cover of which is made of paper
7 or any other substance or material except tobacco.

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, manufacture, or packing of the tobacco
12 product.

13 "Distinguishable" means perceivable by either the sense of
14 smell or taste.

15 "Electronic smoking device" means any electronic product
16 that can be used to aerosolize and deliver nicotine or other
17 substances to the person inhaling from the device, including but
18 not limited to an electronic cigarette, electronic cigar,
19 electronic cigarillo, or electronic pipe, and any e-liquid,
20 cartridge or other component of the device or related product.



1 "E-liquid" means any liquid or like substance, which may or
2 may not contain nicotine, that is designed or intended to be
3 used in an electronic smoking device, whether or not packaged in
4 a cartridge or other container. "E-liquid" does not include any
5 liquid or like substance designed or intended to be used in an
6 electronic smoking device that has a distinguishable taste or
7 aroma of tobacco or menthol; prescription drugs; medical
8 cannabis or manufactured cannabis products; or medical devices
9 used to inhale or ingest prescription drugs, including devices
10 sold at a licensed medical cannabis dispensary.

11 "Entity" means one or more individuals, a company,
12 corporation, a partnership, an association, or any other type of
13 legal entity.

14 "Flavored tobacco product" means any tobacco product that
15 contains a constituent that imparts a characterizing flavor.

16 "Labeling" means written, printed, pictorial, or graphic
17 matter upon a tobacco product or any of its packaging.

18 "Packaging" means a pack, box, carton, or container of any
19 kind, or if no other container, any wrapping, including
20 cellophane, in which a tobacco product is sold or offered for
21 sale to a consumer.



1 "Retailer" means an entity who sells, offers for sale, or
2 exchanges or offers to exchange for any form of consideration
3 tobacco products to consumers. The term "retailer" includes the
4 owner of a tobacco retail location.

5 "Tobacco product" means any product made or derived from
6 tobacco that contains nicotine or other substances and is
7 intended for human consumption or is likely to be consumed,
8 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or
9 ingested by other means. "Tobacco product" includes but is not
10 limited to a cigarette, cigar, pipe tobacco, chewing tobacco,
11 snuff, snus, e-liquid, or an electronic smoking device.

12 "Tobacco product" does not include drugs, devices, or
13 combination products approved for sale by the United States Food
14 and Drug Administration, as those terms are defined in the
15 Federal Food, Drug, and Cosmetic Act.

16 "Tobacco retail location" means any premises where tobacco
17 products are sold or distributed to a consumer, including but
18 not limited to any store, bar, lounge, cafe, stand, outlet,
19 vehicle, cart, location, vending machine, or structure."



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

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

10 SECTION 5. New statutory material is underscored.

11 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

Flavored Tobacco Products; E-Liquid; Sale; Ban; Penalties;
Violations

Description:

Bans the sale of flavored tobacco products, except for menthol and liquid or like substances with a distinguishable taste or aroma of tobacco or menthol. Prohibits the mislabeling, sale, or marketing as nicotine-free any e-liquid product that contains nicotine. Specifies penalties for violations. Takes effect on 7/1/2050. (HD1)

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