
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 Hawai'i. 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 our healthcare system. Annually, \$526,000,000 in health
7 care costs are directly attributed to smoking in the State.

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

16 Candy and fruit flavors improve the taste and reduce the
17 harshness of tobacco products, making them more appealing and



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

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



1 per cent on the islands of Hawai'i, Maui, and Kaua'i. These
2 rates are higher than the national average and demonstrate a
3 disturbing trend of youth nicotine use and threaten the historic
4 decline achieved in combustible cigarette use.

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



1 like popular kids candies, such as Jolly Ranchers and Sour Patch
2 Kids. The legislature additionally finds that young people are
3 disproportionately using flavored tobacco products.

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

12 Accordingly, the purpose of this Act is to prohibit the
13 sale or distribution of all flavored tobacco products in the
14 State of Hawai'i.

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

18 "§712- Sale of flavored tobacco products. (1)
19 Beginning January 1, 2020, it shall be unlawful for any retailer
20 or any agents or employees of the retailer to:



- 1 (A) Sell, offer for sale, or possess with the intent to
2 sell or offer for sale, a flavored tobacco product,
3 except for menthol or mentholated products; or
- 4 (B) Mislabeled as nicotine-free, or sell or market for sale
5 as nicotine-free, any e-liquid product which contains
6 nicotine.
- 7 (2) A statement or claim directed to consumers or the
8 public that the tobacco product has or produces a characterizing
9 flavor, including but not limited to text, color, or images on
10 the tobacco product's labeling or packaging that is used to
11 explicitly or implicitly communicate that the tobacco product
12 has a characterizing flavor made by a manufacturer or an agent
13 or employee of the manufacturer in the course of the person's
14 agency or employment, is prima facie evidence that the tobacco
15 product is a flavored tobacco product.
- 16 (3) Any flavored tobacco product found in the retailer's
17 possession that is in violation of this section shall be
18 considered contraband, promptly seized, subject to immediate
19 forfeiture and destruction and shall not be subject to the
20 procedures set forth in chapter 712A.



1 (4) Any retailer and any agents or employees of the
2 retailer who violate this section may 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,
15 imparted by a tobacco product or any byproduct produced by the
16 tobacco product. Characterizing flavors include but are not
17 limited to tastes or aromas relating to any candy, chocolate,
18 vanilla, honey, fruit, cocoa, coffee, dessert, alcoholic
19 beverage, mint, wintergreen, herb, or spice. A tobacco product
20 shall not be determined to have a characterizing flavor solely
21 because of the use of additives or flavorings or the provision



1 of ingredient information in the absence of a distinguishable
2 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" has the same meaning as defined
16 in section 712-1258(7).

17 "E-liquid" means any liquid or like substance, which may or
18 may not contain nicotine, that is designed or intended to be
19 used in an electronic smoking device, whether or not packaged in
20 a cartridge or other container. The term "e-liquid" does not
21 include prescription drugs; medical cannabis or manufactured



1 cannabis products; or medical devices used to inhale or ingest
2 prescription drugs, including devices sold at a licensed medical
3 cannabis dispensary.

4 "Entity" means one or more individuals, a company,
5 corporation, a partnership, an association, or any other type of
6 legal entity.

7 "Flavored tobacco product" means any tobacco product that
8 contains a constituent that imparts a characterizing flavor.

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

11 "Packaging" means a pack, box, carton, or container of any
12 kind, or if no other container, any wrapping, including
13 cellophane, in which a tobacco product is sold or offered for
14 sale to a consumer.

15 "Retailer" means an entity who sells, offers for sale, or
16 exchanges or offers to exchange for any form of consideration
17 tobacco products or e-liquids to consumers. The term "retailer"
18 includes the owner of a tobacco retail location.

19 "Tobacco product" has the same meaning as defined in
20 section 712-1258(7).



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

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

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

14 SECTION 5. New statutory material is underscored.

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



Report Title:

Flavored Tobacco Products; Sale; Ban; Keiki Caucus

Description:

Bans the sale of flavored tobacco products except for menthol or mentholated products. Prohibits mislabeling of e-liquid products containing nicotine. Establishes fines and penalties for violations. (SB1009 HD2)

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