

JAN 24 2019

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**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 and  
6 our healthcare system. Annually \$526 million in healthcare  
7 costs are directly attributed to smoking in our 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 to become daily smokers by  
14 reducing or masking the natural harshness and taste of tobacco  
15 smoke and 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 alluring and  
18 easier for beginners to try the product and ultimately become

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1 addicted. The popularity of e-cigarettes among youth is  
2 concerning, as these products almost always contain nicotine.  
3 The US Surgeon General's 2016 Report on E-Cigarette Use Among  
4 Youth and Youth Adults reported, "Because the adolescent brain  
5 is still developing, nicotine use during adolescence can disrupt  
6 the formation of brain circuits that control attention,  
7 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 e-  
11 cigarettes, also known as electronic smoking devices (ESDs) by  
12 Hawaii's youth. Vaping in Hawaii has reached epidemic levels.  
13 Between 2011 to 2015, the proportion of youth experimenting with  
14 ESDs increased six-fold among middle school youth and 4-fold  
15 among high school youth. In 2017, twenty-seven per cent of  
16 middle school and forty-two per cent of public high school  
17 students tried ESDs. Today, sixteen per cent of middle school  
18 and more than a quarter of high school students currently vape.  
19 Moreover, current use of ESDs by county is even more problematic  
20 with figures exceeding thirty per cent on Hawaii Island, Maui,  
21 and Kauai. These are higher than the national average and  
22 demonstrate a disturbing trend of youth nicotine use as well as

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1 threatening the historic decline achieved in combustible  
2 cigarette use.

3       The legislature further finds that the 2009 federal law,  
4 the Family Smoking Prevention and Tobacco Control Act, which  
5 prohibited the sale of cigarettes with characterizing flavors  
6 (other than menthol or tobacco) including candy and fruit, did  
7 not apply to other tobacco products. The tobacco industry and  
8 ESD industry have since significantly increased the introduction  
9 and marketing of flavored non-cigarette tobacco products,  
10 especially ESDs. It is no coincidence that the number of ESD  
11 flavors have skyrocketed in recent years, with more than 15,500  
12 unique ESD flavors identified in a 2018 study by Zhu, S-H, et  
13 al. Our state has experienced the heightened promotion of vape  
14 products by offering candy and local flavors that appeal to  
15 Hawaii's youth. ESD products are flavored to taste like candy,  
16 fruit, chocolate, and mint, Kona coffee, Maui Mango, Shaka  
17 strawberry, and Molokai hot bread. Finally, many of the  
18 packages are designed to look like popular children's candies  
19 like Jolly Ranchers and Sour Patch kids. The legislature  
20 additionally finds that young people are disproportionately  
21 using flavored tobacco products and it was the most important  
22 reason for trying ESDs according to several national studies.

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1 The National Youth Tobacco Survey found youth who use flavored  
2 ESDs are more likely to start using regular cigarettes, less  
3 likely to intend to quit using, and have a lower perception of  
4 the dangers of tobacco use.

5 Given the significant threat to public health posed by  
6 flavored tobacco products, a growing number of jurisdictions  
7 including San Francisco, Berkeley, Chicago, Minneapolis, and  
8 Providence have introduced and passed legislation to regulate  
9 the sale of flavored tobacco products.

10 This legislature concludes that Hawaii should also take  
11 steps to regulate such products to reduce tobacco-related health  
12 disparities and address the youth vaping epidemic. Accordingly,  
13 the purpose of this Act is to prohibit the sale or distribution  
14 of any flavored tobacco products within the State of Hawaii.

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

18 "CHAPTER

19 PROHIBITION ON THE SALE OF FLAVORED TOBACCO PRODUCTS

20 § -1 Definitions. As used in this chapter, unless the  
21 context otherwise requires:

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1 "Characterizing flavor" means a distinguishable taste or  
2 aroma or both, other than the taste or aroma of tobacco,  
3 imparted by a tobacco product or any byproduct produced by the  
4 tobacco product. Characterizing flavors include, but are not  
5 limited to, tastes or aromas relating to any candy, chocolate,  
6 vanilla, honey, fruit, cocoa, coffee, desert, alcoholic  
7 beverage, mint, wintergreen, herb, or spice. A tobacco product  
8 shall not be determined to have a characterizing flavor solely  
9 because of the use of additives or flavorings or the provision  
10 of ingredient information. Rather, it is the presence of a  
11 distinguishable taste or aroma or both.

12 "Cigarette" means any roll for smoking made wholly or in  
13 part of tobacco, irrespective of size and shape and whether or  
14 not the tobacco is flavored, adulterated, or mixed with any  
15 other ingredient, the wrapper or cover of which is made of  
16 paper or any other substance or material except tobacco.

17 "Constituent" means any ingredient, substance, chemical,  
18 or compound, other than tobacco, water, or reconstituted  
19 tobacco sheet that is added by the manufacturer to a tobacco  
20 product during the processing, manufacture, or packing of the  
21 tobacco product.

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1 "Distinguishable" means perceivable by either the sense of  
2 smell or taste.

3 "Electronic Smoking Device" means any electronic product,  
4 or part thereof, that can be used by a person to simulate  
5 smoking in the delivery of~~to aerosolize and deliver~~ nicotine or  
6 other substances, intended for human consumption through  
7 inhalation of vapor or aerosol ~~to the person inhaling~~ from the  
8 ~~device~~product. The term "electronic smoking device" includes,  
9 but is not limited to an electronic cigarette, electronic  
10 cigar, electronic cigarillo, or electronic pipe, electronic  
11 hookah, vape pen or related product, and any cartridge or other  
12 component of the device or related product.

13 "E-liquid" means any liquid or like substance, which may or  
14 may not contain nicotine, that is designed or intended to be  
15 used in an electronic smoking device, whether or not packaged in  
16 a cartridge or other container. The term "E-liquid" does not  
17 include prescription drugs; cannabis or manufactured cannabis  
18 products under chapter 329D; or medical devices used to  
19 aerosolize, inhale or ingest prescription drugs, including  
20 manufactured cannabis products manufactured or distributed in  
21 accordance with section 329D-10(a).

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1 "Enforcing agency" means the department of the attorney  
2 general, another state agency, including but not limited to, the  
3 department of health, county law enforcement agencies,  
4 prosecuting attorneys, or county counsels.

5 "Flavored tobacco product" means any tobacco product that  
6 contains a constituent that imparts a characterizing flavor.

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

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

13 "Tobacco product" means any product that is made or derived  
14 from tobacco in any form, or that contains nicotine that is  
15 intended for human consumption, or is likely to be consumed,  
16 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or  
17 ingested by other means. The term "tobacco product" includes,  
18 but is not limited to, pipe tobacco, chewing or smokeless  
19 tobacco, snuff, snus, cigarette, little cigar, electronic  
20 smoking device, e-liquid, or related product. "Tobacco product"  
21 does not include drugs, devices, or combination products

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1 approved for sale by the United States Food and Drug  
2 Administration, as those terms are defined in the Federal Food,  
3 Drug, and Cosmetic Act.

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

8 "Tobacco retailer" means an entity who sells, offers for  
9 sale, or does or offers to exchange for any form of  
10 consideration tobacco products to consumers and includes the  
11 owner of a tobacco retail location.

12 § -2 Prohibition; presumption; local standard. (a)  
13 Beginning January 1, 2020, a retailer, or any of the retailers  
14 agents or employees, shall not sell, offer for sale, or possess  
15 with the intent to sell or offer for sale, a flavored tobacco  
16 product.

17 (b) There shall be a rebuttable presumption that a tobacco  
18 product is a flavored tobacco product if a manufacturer or any  
19 of the manufacturer's agents or employees, in the course of his  
20 or her agency or employment, has made a statement or claim  
21 directed to consumers or to the public that the tobacco product  
22 has or produces a characterizing flavor, including, but not



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1 limited to text, color, images, or all, on the product's  
2 labeling or packaging that are used to explicitly or implicitly  
3 communicate that the tobacco product has a characterizing  
4 flavor.

5 (c) This section does not preempt or otherwise prohibit  
6 the adoption of a local standard that imposes greater  
7 restrictions on the access of tobacco products than the  
8 restrictions imposed by this section. To the extent that there  
9 is an inconsistency between this section and a local standard  
10 that imposes greater restrictions on the access of tobacco  
11 products, the greater restriction on the access of tobacco  
12 products in the local standard shall prevail.

13 § -3 **Enforcement.** (a) Any tobacco product or  
14 electronic smoking device, as those terms are defined in section  
15 -1, in the person's possession at the time of violation of  
16 section -2 shall be seized, summarily forfeited to the State,  
17 and destroyed by law enforcement following the conclusion of an  
18 administrative or judicial proceeding finding that a violation  
19 of section -2 has been committed.

20 (b) Any tobacco retailer who violates this chapter shall  
21 be fined \$500 for the first offense. Any subsequent offenses

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1 shall subject the tobacco retailer to a fine not less than \$500  
2 nor more than \$10,000.

3 SECTION 3. This Act shall be liberally construed to  
4 accomplish the purpose set forth in section 1 of this Act.

5 SECTION 4. All laws and parts of laws heretofore enacted  
6 that are in conflict with the provisions of this Act are hereby  
7 amended to conform herewith.

8 SECTION 5. 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 6. This Act, upon its approval, shall take effect  
15 on January 1, 2020.

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INTRODUCED BY:                     *M. M. W.*                    

BY REQUEST

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**Report Title:**

Flavored Tobacco Products; Tobacco Products

**Description:**

Prohibits the sale, offering for sale, furnishing, or distribution of any flavored tobacco product within the State effective 01/01/2020.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO FLAVORED TOBACCO PRODUCTS.

PURPOSE: To prohibit the sale, offering for sale, furnishing, or distribution of any flavored tobacco products within the State.

MEANS: Add a new chapter to the Hawaii Revised Statutes.

JUSTIFICATION: This measure responds to the increasing trend of youth nicotine use through the appeal of electronic smoking devices (ESDs) and other tobacco products that feature characterizing flavors.

Impact on the public: This prohibition on sales of flavored tobacco will restrict access to the products by youths, who are disproportionately attracted to ESDs. The appeal of flavors is linked to youth experimentation and initiation. This measure will not limit adults smokers' ability to obtain non-flavored tobacco products.

Impact on the department and other agencies: This proposal will strengthen enforcement of section 712-1258, HRS because of the additional specificity on the accountable party, and allowable tobacco products.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HTH 590.

OTHER AFFECTED AGENCIES: Department of the Attorney General; County Law Enforcement Agencies.

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EFFECTIVE DATE: January 1, 2020.