

JAN 17 2020

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# A BILL FOR AN ACT

RELATING TO FLAVORED PRODUCTS FOR ELECTRONIC SMOKING DEVICES.

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

1           SECTION 1. The legislature finds that there has been a  
2 dramatic increase in the use of electronic smoking devices by  
3 Hawaii's youth. Between 2011 to 2015, the proportion of youth  
4 experimenting with electronic smoking devices increased six-fold  
5 among middle school youth and four-fold among high school youth.  
6 In 2017, twenty-seven per cent of middle school students and  
7 forty-two per cent of public high school students tried  
8 electronic smoking devices. Today, sixteen per cent of middle  
9 school students and more than a quarter of high school students  
10 use electronic smoking devices.

11           Current use of electronic smoking devices by county is even  
12 more problematic, with figures exceeding thirty per cent on the  
13 islands of Hawaii, Maui, and Kauai. These rates are higher than  
14 the national average, demonstrate a disturbing trend of youth  
15 nicotine use, and threaten to undermine the historic decline in  
16 combustible cigarette use that has been achieved.



1           The legislature further finds that popularity of electronic  
2 cigarettes among youth is especially concerning because these  
3 products contain nicotine. On December 18, 2018, the United  
4 States Surgeon General made the unprecedented move of  
5 classifying the danger of youth usage of electronic smoking  
6 devices as an epidemic. The United States Surgeon General noted  
7 in the 2016 report titled, "E-Cigarette Use Among Youth and  
8 Young Adults", that "[b]ecause the adolescent brain is still  
9 developing, nicotine use during adolescence can disrupt the  
10 formation of brain circuits that control attention, learning,  
11 and susceptibility to addiction."

12           The legislature is also concerned with the number of severe  
13 lung injuries being reported nationally in 2019. Specifically,  
14 there are more than two thousand cases of severe lung injury  
15 associated with electronic cigarette use and over forty deaths  
16 nationwide. Hawaii has had four reported cases of severe lung  
17 injury, with potentially more on the horizon. The unregulated  
18 nature of electronic cigarettes is making it difficult for  
19 public health officials to determine the source and cause of  
20 these injuries.



1           The legislature also finds that a significant driver to  
2 increased youth use of electronic smoking devices is the  
3 availability of flavored products. While a 2009 federal law,  
4 the Family Smoking Prevention and Tobacco Control Act,  
5 prohibited characterizing flavors, including fruit and candy  
6 flavorings, in cigarettes, it did not ban the use of  
7 characterizing flavors in other tobacco products, such as  
8 electronic smoking devices.

9           The tobacco industry and electronic smoking device industry  
10 have in recent years significantly increased the introduction  
11 and marketing of flavored non-cigarette tobacco products for  
12 electronic smoking devices. Adding flavors to tobacco changes  
13 the taste and reduces the harshness of the otherwise unflavored  
14 tobacco product, making smoking more appealing and easier for  
15 beginners to try. According to a recent survey, eighty-one per  
16 cent of youth who used a tobacco product reported that the first  
17 tobacco product they used was flavored. Therefore, it is no  
18 coincidence that the number of electronic cigarette flavors has  
19 skyrocketed in recent years, with more than fifteen thousand  
20 unique electronic cigarette flavors identified in a 2018 study.



1           The legislature further finds that Hawaii has experienced  
2 the heightened promotion of electronic cigarette products that  
3 offer flavors designed to appeal to the State's youth, such as  
4 candy, fruit, chocolate, mint, Kona coffee, Maui mango, shaka  
5 strawberry, and Molokai hot bread. Additionally, many of the  
6 packages are designed to resemble popular candies, such as Jolly  
7 Ranchers and Sour Patch Kids.

8           Accordingly, the purpose of this Act is to prohibit:

- 9           (1) The sale of flavored products for electronic smoking  
10           devices;
- 11           (2) The mislabeling of e-liquid products containing  
12           nicotine; and
- 13           (3) The sale of electronic smoking devices, e-liquid,  
14           electronic smoking device accessories, and flavored  
15           products for electronic smoking devices other than  
16           through retail sales via a direct, in-person exchange  
17           between a retailer and consumer.

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



1           "§712-     Sale of flavored products for electronic smoking  
2 devices; mislabeling; nicotine-free; remote retail sales. (1)  
3 Beginning July 1, 2020, it shall be unlawful for any retailer or  
4 any agents or employees of the retailer to:

5           (a)     Sell, offer for sale, or possess with the intent to  
6           sell or offer for sale, a flavored product for  
7           electronic smoking devices;

8           (b)     Mislabel as nicotine-free, or sell or market for sale  
9           as nicotine-free, any e-liquid product that contains  
10           nicotine; or

11           (c)     Sell electronic smoking devices, e-liquid, electronic  
12           smoking device accessories, and flavored products for  
13           electronic smoking devices other than through retail  
14           sales via a direct, in-person exchange between a  
15           retailer and a consumer.

16           (2)     A statement or claim directed to consumers or the  
17 public that an e-liquid or electronic smoking device accessory  
18 is flavored shall be prima facie evidence that the product is a  
19 flavored product for electronic smoking devices; provided that  
20 the statement or claim may include but not be limited to text,  
21 color, or images on the product's labeling or packaging that is



1 used to explicitly or implicitly communicate that the product  
2 has a flavor made by a manufacturer or an agent or employee of  
3 the manufacturer in the course of the person's agency or  
4 employment.

5 (3) Any flavored product for electronic smoking devices  
6 found in a retailer's possession that is in violation of this  
7 section shall be considered contraband, promptly seized, and  
8 subject to immediate forfeiture and destruction, and shall not  
9 be subject to the procedures set forth in chapter 712A.

10 (4) Any retailer who violates this section may be  
11 sentenced to a fine of \$500 per day. Any subsequent offenses  
12 shall subject the offender to a fine of not less than \$500 and  
13 not more than \$2,500 per day.

14 (5) Notwithstanding any other law to the contrary, any  
15 county may adopt a rule or ordinance that places greater  
16 restrictions on the access to flavored products for electronic  
17 smoking devices than provided for in this section. In the case  
18 of a conflict between the restrictions in this section and any  
19 county rule or ordinance regarding access to flavored products  
20 for electronic smoking devices, the more stringent restrictions  
21 shall prevail.



1        (6) For the purposes of this section:

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

4        "Electronic smoking device" has the same meaning as defined  
5 in section 712-1258(7).

6        "E-liquid" means any liquid or like substance, which may or  
7 may not contain nicotine, that is designed or intended to be  
8 used in an electronic smoking device, whether or not packaged in  
9 a cartridge or other container.

10       "Flavored product for electronic smoking devices" means any  
11 electronic smoking device product that contains a taste or smell  
12 that is distinguishable by a consumer either prior to, or during  
13 the consumption of, a nicotine product, including but not  
14 limited to any taste or smell relating to fruit, menthol, mint,  
15 wintergreen, chocolate, cocoa, vanilla, honey, or any candy,  
16 dessert, alcoholic beverage, herb, or spice.

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

19       "Packaging" means a pack, box, carton, or container of any  
20 kind, or if no other container, any wrapping, including



1 cellophane, in which a flavored product for electronic smoking  
2 devices is sold or offered for sale to a consumer.

3 "Retailer" means an entity that sells, offers for sale, or  
4 exchanges or offers to exchange for any form of consideration  
5 tobacco products, including electronic smoking devices,  
6 e-liquids, or electronic smoking device accessories, to  
7 consumers. The term "retailer" includes the owner of a tobacco  
8 retail location.

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

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

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

18 SECTION 4. New statutory material is underscored.

19 SECTION 5. This Act shall take effect on July 1, 2020.

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INTRODUCED BY: *Randy de Bate*  
*DKA*  
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# S.B. NO. 2228

**Report Title:**

Flavored Products for Electronic Smoking Devices; Ban; Sales; Labeling; Retailer

**Description:**

Beginning July 1, 2020, prohibits the sale of flavored products for electronic smoking devices, the mislabeling of e-liquid products containing nicotine, and the sale of tobacco products other than through retail sales via a direct, in-person exchange between a retailer and consumer. Establishes penalties.

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