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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 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 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           Menthol, in particular, is used by the tobacco industry  
17 because it has a cooling and numbing effect and can reduce the



1 throat irritation from smoking, thus making menthol cigarettes  
2 an appealing option for youth who are initiating tobacco use.  
3 Candy and fruit flavors improve the taste and reduce the  
4 harshness of tobacco products, making them more appealing and  
5 easier for beginners to try tobacco products and ultimately  
6 become addicted. The popularity of electronic cigarettes among  
7 youth is concerning, as these products contain nicotine. The  
8 United States Surgeon General noted in the 2016 report titled  
9 "E-Cigarette Use Among Youth and Youth Adults" that "[b]ecause  
10 the adolescent brain is still developing, nicotine use during  
11 adolescence can disrupt the formation of brain circuits that  
12 control attention, learning, and susceptibility to addiction."

13 The legislature further finds that while there has been a  
14 decline in the use of combustible cigarettes over the last  
15 decade, there has been a dramatic increase in the use of  
16 electronic smoking devices by Hawaii's youth. Vaping in Hawaii  
17 has reached epidemic levels. Between 2011 to 2015, the  
18 proportion of youth experimenting with electronic smoking  
19 devices increased six-fold among middle school youth and four-  
20 fold among high school youth. In 2017, twenty-seven per cent of  
21 middle school and forty-two per cent of public high school



1 students tried electronic smoking devices. Today, sixteen per  
2 cent of middle school and more than a quarter of high school  
3 students vape. Current use of electronic smoking devices by  
4 county is even more problematic, with figures exceeding thirty  
5 per cent on the islands of Hawaii, Maui, and Kauai. These rates  
6 are higher than the national average and demonstrate a  
7 disturbing trend of youth nicotine use and threaten the historic  
8 decline achieved in combustible cigarette use.

9 The legislature further finds that a 2009 federal law, the  
10 Family Smoking Prevention and Tobacco Control Act, prohibited  
11 characterizing flavors, including fruit and candy flavorings, in  
12 cigarettes but did not ban menthol in cigarettes or the use of  
13 characterizing flavors in other tobacco products. Only  
14 cigarettes, roll-your-own tobacco, and smokeless tobacco are  
15 subject to regulation under this Act. The tobacco industry and  
16 electronic smoking device industry have since significantly  
17 increased the introduction and marketing of flavored non-  
18 cigarette tobacco products, especially electronic smoking  
19 devices. It is no coincidence that the number of electronic  
20 cigarette flavors have skyrocketed in recent years, with more  
21 than fifteen thousand five hundred unique e-cigarette flavors



1 identified in a 2018 study. Hawaii has experienced the  
2 heightened promotion of vape products that offer candy and local  
3 flavors designed to appeal to the State's youth, such as candy,  
4 fruit, chocolate, mint, Kona coffee, Maui mango, Shaka  
5 strawberry, and Moloka'i hot bread. Additionally, many of the  
6 packages are designed to look like candies popular with  
7 children, such as Jolly Ranchers and Sour Patch Kids.

8 The legislature additionally finds that young people are  
9 disproportionately using flavored tobacco products, including  
10 menthol. According to the 2010 study Smoking and Tobacco Use in  
11 Hawaii, seventy-eight per cent of Native Hawaiian and Pacific  
12 islander adult smokers and forty-two per cent of Caucasian adult  
13 smokers consume menthol cigarettes. A 2008 study also indicated  
14 the high use of menthol cigarettes among Filipino adults.  
15 Conservative estimates noted in a 2011 paper suggest that over  
16 three hundred thousand deaths can be averted by the year 2050,  
17 if menthol cigarette smoking is eliminated.

18 Given the significant threat to public health posed by  
19 flavored tobacco products, including those with menthol, a  
20 growing number of jurisdictions, including San Francisco;  
21 Berkeley; Chicago; Minneapolis; and Providence, Rhode Island,



1 have introduced and passed legislation to regulate the sale of  
2 flavored tobacco products. The legislature concludes that  
3 Hawaii should also take steps to regulate these products to  
4 reduce tobacco-related health disparities and address the youth  
5 vaping epidemic.

6 Accordingly, the purpose of this Act is to prohibit the  
7 sale or distribution in the State of all flavored tobacco  
8 products, including products with menthol.

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

12 "§712- Sale of flavored tobacco products; mislabeling  
13 as nicotine-free. (1) Beginning January 1, 2021, it shall be  
14 unlawful for any retailer or any agents or employees of the  
15 retailer to:

- 16 (A) Sell, offer for sale, or possess with the intent to  
17 sell or offer for sale, a flavored tobacco product; or
- 18 (B) Mislabel as nicotine-free, or sell or market for sale  
19 as nicotine-free, any e-liquid product which contains  
20 nicotine.



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

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

17       (4) Any retailer and any agent or employee of a retailer  
18 who violate this section shall be subject to a fine not  
19 exceeding \$500. Any subsequent violation shall subject the  
20 offender to a fine of not less than \$500 nor more than \$2,000.



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

8       (6) For the purposes of this section:

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

20       "Cigarette" means any roll for smoking made wholly or in  
21 part of tobacco, irrespective of size and shape and whether or



1 not the tobacco is flavored, adulterated, or mixed with any  
2 other ingredient, the wrapper or cover of which is made of paper  
3 or any other substance or material except tobacco.

4 "Constituent" means any ingredient, substance, chemical, or  
5 compound, other than tobacco, water, or reconstituted tobacco  
6 sheet that is added by the manufacturer to a tobacco product  
7 during the processing, manufacture, or packing of the tobacco  
8 product.

9 "Distinguishable" means perceivable by either the sense of  
10 smell or taste.

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

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 limited liability  
5 company, corporation, a partnership, an association, or any  
6 other type of business.

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 that sells, offers for sale, or  
16 exchanges or offers to exchange tobacco products to consumers  
17 for any form of consideration. The term "retailer" includes an  
18 owner of a tobacco retail location.

19 "Tobacco product" means any product made or derived from  
20 tobacco that contains nicotine or other substances and is  
21 intended for human consumption or is likely to be consumed,



1 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or  
2 ingested by other means. "Tobacco product" includes but is not  
3 limited to a cigarette, cigar, pipe tobacco, chewing tobacco,  
4 snuff, snus, e-liquid, or an electronic smoking device.  
5 "Tobacco product" does not include drugs, devices, or  
6 combination products approved for sale by the United States Food  
7 and Drug Administration, as those terms are defined in the  
8 Federal Food, Drug, and Cosmetic Act.

9 "Tobacco retail location" means any premises where tobacco  
10 products are sold or distributed to a consumer, including any  
11 store, bar, lounge, cafe, stand, outlet, vehicle, cart,  
12 location, vending machine, or structure."

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

16 SECTION 4. If any provision of this Act, or the  
17 application thereof to any person or circumstance, is held  
18 invalid, the invalidity does not affect other provisions or  
19 applications of the Act that can be given effect without the  
20 invalid provision or application, and to this end the provisions  
21 of this Act are severable.



- 1 SECTION 5. New statutory material is underscored.
- 2 SECTION 6. This Act shall take effect on July 1, 2050.



**Report Title:**

Flavored Tobacco Products; Sale; Ban

**Description:**

Bans the sale of flavored tobacco products. Effective 7/1/2050.  
(SD2)

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