
A BILL FOR AN ACT

RELATING TO TOBACCO PRODUCTS.

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

1 SECTION 1. Tobacco use remains the leading cause of
2 preventable disease and death in the United States and in
3 Hawaii. Tobacco use is a serious public health problem in terms
4 of the human suffering and loss of life it causes, as well as
5 the financial burden it imposes on society and our health care
6 system. According to the Centers for Disease Control and
7 Prevention's 2014 "Best Practices for Comprehensive Tobacco
8 Control Programs" guide, \$526,000,000 in health care costs are
9 directly attributed to smoking in the State of Hawaii.

10 Furthermore, in a 2016 report titled "E-Cigarette Use Among
11 Youth and Young Adults," the United States Surgeon General
12 explained that ninety-five per cent of all smokers start smoking
13 before the age of twenty-one. A 2017 study published in the
14 American Journal of Preventive Medicine found that eighty-one
15 per cent of youth who ever used a tobacco product report that
16 the first product they used was flavored. Flavored tobacco
17 products promote youth initiation to tobacco use and push young



1 occasional smokers to become daily smokers by reducing or
2 masking the natural harshness and taste of tobacco smoke,
3 thereby increasing the appeal of tobacco products.

4 Menthol is used by the tobacco industry because it has a
5 cooling and numbing effect and can reduce the throat irritation
6 caused by smoking, thus making menthol cigarettes an appealing
7 option for youth who are initiating tobacco use. Candy and
8 fruit flavors improve the taste and reduce the harshness of
9 tobacco products, making them more appealing and easier for
10 beginners to try tobacco products and ultimately become
11 addicted. The popularity of electronic cigarettes among youth
12 is concerning. The combination of enticing flavors and nicotine
13 salts allows higher levels of nicotine to be inhaled with less
14 irritation because they have a lower potential of hydrogen, also
15 known as "pH." In the 2016 report titled "E-Cigarette Use Among
16 Youth and Young Adults," the United States Surgeon General
17 stated that, "Compared with older adults, the brain of the youth
18 and young adults is more vulnerable to the negative consequences
19 of nicotine exposure. The effects include addiction, priming
20 for use of other addictive substances, reduced impulse control,
21 deficits in attention and cognition, and mood disorders."



1 While there has been a significant decline in the use of
2 combustible cigarettes over the last decade, there has been a
3 dramatic increase in the use of electronic smoking devices by
4 Hawaii's youth. Vaping in Hawaii is at an epidemic level.
5 According to the 2011 and 2015 Hawaii Youth Tobacco Survey,
6 during these four years, the proportion of youth experimenting
7 with electronic smoking devices increased six-fold among middle
8 school youth and four-fold among high school youth. According
9 to the 2019 Hawaii Youth Risk Behavior Survey, thirty-one per
10 cent of middle school and forty-eight per cent of public high
11 school students had tried electronic smoking devices. The 2019
12 Hawaii Youth Risk Behavior Survey also indicates that eighteen
13 per cent of middle school and thirty-one per cent of high school
14 students currently vape. The 2019 Hawaii Youth Risk Behavior
15 Survey also shows the rates are higher in the neighbor island
16 counties with high school vaping use rates exceeding thirty-five
17 per cent for Hawaii, Maui, and Kauai. These rates rank among
18 the highest in the country.

19 Furthermore, while the 2009 Family Smoking Prevention and
20 Tobacco Control Act (Tobacco Control Act, P.L. 111-31),
21 prohibited characterizing flavors, including fruit and candy



1 flavorings, in cigarettes, it did not ban menthol in cigarettes
2 or the use of characterizing flavors in other tobacco products.
3 The Tobacco Control Act provided the United States Food and Drug
4 Administration with the authority to regulate cigarettes, roll-
5 your-own tobacco, and smokeless tobacco, but required the Food
6 and Drug Administration to undertake an extensive rulemaking
7 process to extend its regulatory authority to include e-
8 cigarettes. Delays in the regulatory process allowed the
9 tobacco industry and electronic smoking device industry to
10 significantly increase the introduction of and extensively
11 market flavored non-cigarette tobacco products, especially in
12 electronic smoking devices. It is no coincidence that the
13 number of electronic cigarette flavors have skyrocketed in
14 recent years. In a 2018 study published in The Journal of
15 Medical Internet Research, the count of flavor labels was
16 reported to have more than doubled from 7,776 in 2013-2014 to
17 15,586 in 2016-2017. Hawaii has experienced the heightened
18 promotion of vape products that offer candy and local flavors
19 designed to appeal to the State's youth, such as orange soda,
20 apple mui, Kona coffee, Maui Mango, Shaka strawberry, lychee
21 ice, and Molokai Hot Bread. Additionally, many of the packages



1 are designed to look like candies popular with children, such as
2 Jolly Ranchers and Sour Patch Kids.

3 Additionally, young people are disproportionately using
4 flavored tobacco products, including menthol. According to a
5 2010 Hawaii State Department of Health report titled "Smoking
6 and Tobacco Use in Hawaii: Facts, Figures and Trends," seventy-
7 eight per cent of native Hawaiian and Pacific islander adult
8 smokers and forty-two per cent of Caucasian adult smokers
9 consume menthol cigarettes. A 2019 study published in the
10 Hawai'i Journal of Health and Social Welfare found that sixty-
11 seven per cent of Filipino adult smokers preferred the menthol
12 flavor. In a 2011 modeling study published in the American
13 Journal of Public Health, an estimated 633,252 deaths nationally
14 can be averted by the year 2050, if menthol cigarette smoking is
15 banned.

16 Given the significant threat to public health posed by
17 flavored tobacco products, including those with menthol, five
18 states, including California, Massachusetts, New Jersey, New
19 York, and Rhode Island, and dozens of cities have enacted laws
20 prohibiting the sale of flavored tobacco products. These laws
21 now protect over twenty-five per cent of the United States



1 population. Hawaii should also take steps to regulate these
2 products to reduce tobacco-related health disparities and
3 address the youth vaping epidemic.

4 Accordingly, the purpose of this Act is to prohibit the
5 sale or distribution in Hawaii of all flavored tobacco products,
6 including products with menthol, and prohibit the mislabeling of
7 products as nicotine-free.

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

11 "§712- Sale of flavored tobacco products; mislabeling as
12 nicotine-free. (1) Beginning January 1, 2023, it shall be
13 unlawful for any retailer or any agent or employee of the
14 retailer to:

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

20 (2) A statement or claim, including but not limited to
21 text, color, or images on the tobacco product's labeling or



packaging that is used to explicitly or implicitly communicate that the tobacco product has a flavor other than tobacco, made by a manufacturer or an agent or employee of the manufacturer in the course of the person's agency or employment, and directed to consumers or the public shall be prima facie evidence that the tobacco product is a flavored tobacco product.

(3) A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information in the absence of a distinguishable taste or aroma, or both.

(4) Any flavored tobacco product found in a retailer's possession that is in violation of this section shall be considered contraband, promptly seized, subject to immediate forfeiture and destruction or disposal as hazardous waste, as defined in section 342J-2, and shall not be subject to the procedures set forth in chapter 712A.

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



1 (6) 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 (7) 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.

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



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

6 "Distinguishable" means perceivable by either the sense of
7 smell or taste.

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

14 "E-liquid" means any liquid or like substance, which may or
15 may not contain nicotine, that is designed or intended to be
16 used in an electronic smoking device, whether or not packaged in
17 a cartridge or other container. "E-liquid" shall not include
18 prescription drugs; medical cannabis or manufactured cannabis
19 products pursuant to chapter 329D; or medical devices used to
20 aerosolize, inhale, or ingest prescription drugs, or



1 manufactured cannabis products manufactured or distributed in
2 accordance with section 329D-10(a).

3 "Entity" means one or more individuals, a limited liability
4 company, corporation, a partnership, an association, or any
5 other type of business.

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

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

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

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

18 "Tobacco product" means any product containing, made of, or
19 derived from tobacco or nicotine that is intended for human
20 consumption or is likely to be consumed, whether smoked, heated,
21 chewed, absorbed, dissolved, inhaled, or ingested by other



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

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

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

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



1 SECTION 5. New statutory material is underscored.

2 SECTION 6. This Act, upon its approval, shall take effect

3 on January 1, 2050.



Report Title:

Flavored Tobacco Products; Sale; Ban

Description:

Bans the sale of flavored tobacco products and mislabeled e-liquid products. Effective 1/1/2050. (SD1)

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