

JAN 20 2023

A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. Chapter 712, Hawaii Revised Statutes, is
2 amended by adding a new section to part IV to be appropriately
3 designated and to read as follows:

4 "§712- Sale of flavored tobacco products; mislabeling as
5 nicotine-free. (1) Beginning January 1, 2024, it shall be
6 unlawful for any retailer, or any agent or employee of the
7 retailer, to:

8 (a) Sell, offer for sale, or possess with the intent to
9 sell or offer for sale, a flavored tobacco product; or

10 (b) Mislabel as nicotine-free, or sell or market for sale
11 as nicotine-free, any e-liquid product that contains
12 nicotine.

13 (2) A statement or claim, including but not limited to
14 text, color, or images on the tobacco product's labeling or
15 packaging that is used to explicitly or implicitly communicate
16 that the tobacco product has a flavor other than tobacco, made
17 by a manufacturer or an agent or employee of the manufacturer in



1 the course of the person's agency or employment, and directed to
2 consumers or the public, shall be prima facie evidence that the
3 tobacco product is a flavored tobacco product.

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

8 (4) Any flavored tobacco product found in a retailer's
9 possession that is in violation of this section shall be
10 considered contraband, promptly seized, subject to immediate
11 forfeiture and destruction or disposal, and shall not be subject
12 to the procedures set forth in chapter 712A; provided that the
13 cost of proper disposal of electronic smoking devices and
14 e-liquids as hazardous waste under section 11-266.1, Hawaii
15 Administrative Rules, shall be borne by the retailer.

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

20 (6) Notwithstanding any other law to the contrary, any
21 county may adopt a rule or ordinance that places greater



1 restrictions on the access to flavored tobacco products than
2 provided in this section. In the case of a conflict between the
3 restrictions in this section and any county rule or ordinance
4 regarding access to flavored tobacco products, the more
5 stringent restrictions shall prevail.

6 (7) For the purposes of this section:

7 "Characterizing flavor" means a distinguishable taste or
8 aroma, or both, other than the taste or aroma of tobacco,
9 imparted by a tobacco product or any byproduct produced by the
10 tobacco product. Characterizing flavors include but are not
11 limited to tastes or aromas relating to any candy, chocolate,
12 vanilla, honey, fruit, cocoa, coffee, dessert, alcoholic
13 beverage, menthol, mint, wintergreen, herb, or spice.

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

19 "Constituent" means any ingredient, substance, chemical, or
20 compound, other than tobacco, water, or reconstituted tobacco
21 sheet, that is added by the manufacturer to a tobacco product



1 during the processing, manufacture, or packing of the tobacco
2 product.

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

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

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



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

4 "Flavored tobacco product" means any tobacco product that
5 contains a constituent that imparts a characterizing flavor, but
6 does not include any product that has received a marketing
7 granted order from the United States Food and Drug
8 Administration pursuant to Title 21 United States Code section
9 387j.

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

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

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

20 "Tobacco product" means any product containing, made of, or
21 derived from tobacco or nicotine that is intended for human



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

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

14 SECTION 2. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 3. If any provision of this Act, or the
18 application thereof to any person or circumstance, is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 4. New statutory material is underscored.

4 SECTION 5. This Act shall take effect on July 1, 2023.

5

INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be 'J. J.', is written over a horizontal line that serves as a signature line.

S.B. NO. 942

Report Title:

Flavored Tobacco Products; Sale; Ban

Description:

Bans the sale of flavored tobacco products and mislabeled e-liquid products. Establishes fines.

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

