
A BILL FOR AN ACT

RELATING TO THE YOUTH VAPING EPIDEMIC.

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 that results in loss of life and financial burdens on
5 society and the healthcare system. Annually, \$526,000,000 in
6 health care costs are directly attributed to smoking in the
7 State.

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
11 electronic smoking devices by Hawaii's youth. Between 2011 to
12 2015, the proportion of youth experimenting with electronic
13 smoking devices increased six-fold among middle school youth and
14 four-fold among high school youth. In 2017, twenty-seven per
15 cent of middle school students and forty-two per cent of public
16 high school students tried electronic smoking devices. Today,
17 sixteen per cent of middle school students and more than a



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

8 The popularity of electronic cigarettes among youth is
9 especially concerning because these products contain nicotine.
10 The United States Surgeon General noted in the 2016 report
11 titled "E-Cigarette Use Among Youth and Young Adults" that
12 "[b]ecause the adolescent brain is still developing, nicotine
13 use during adolescence can disrupt the formation of brain
14 circuits that control attention, learning, and susceptibility to
15 addiction."

16 Use of an electronic smoking device also puts the user at
17 risk for lung injury and even death. Following more than one
18 thousand reported cases of lung injury and eighteen confirmed
19 deaths associated with the use of electronic cigarette or
20 "vaping" products nationwide, in 2019, the department of health
21 issued a health advisory urging everyone to stop vaping.



1 The legislature further finds that a significant driver to
2 increased youth use of electronic smoking devices is the
3 availability of flavored tobacco products. While a 2009 federal
4 law, 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. The tobacco industry and electronic
9 smoking device industry have in recent years significantly
10 increased the introduction and marketing of flavored non-
11 cigarette tobacco products for electronic smoking devices.

12 Adding flavoring to tobacco changes the taste and reduces
13 the harshness of the otherwise unflavored tobacco product,
14 making smoking more appealing and easier for beginners to try
15 and ultimately become addicted. According to a recent survey,
16 eighty-one per cent of youth who have ever used a tobacco
17 product reported that the first tobacco product they used was
18 flavored.

19 It is no coincidence that the number of electronic
20 cigarette flavors has skyrocketed in recent years, with more
21 than fifteen thousand unique electronic cigarette flavors



1 identified in a 2018 study. Hawaii has experienced the
2 heightened promotion of electronic cigarette products that offer
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 Molokai hot bread. Additionally, many of the
6 packages are designed to resemble popular candies, such as Jolly
7 Ranchers and Sour Patch Kids. The legislature additionally
8 finds that young people are disproportionately using flavored
9 tobacco products, including menthol. In Hawaii, seventy-eight
10 per cent of Native Hawaiians and Pacific Islanders and forty-two
11 per cent of Caucasian adult smokers consume menthol cigarettes.
12 Menthol cigarette use is high among Filipinos as well. Current
13 estimates predict that menthol cigarette smoking will contribute
14 to more than three hundred thousand deaths by 2050.

15 Given the significant threat to public health posed by
16 flavored tobacco products, including menthol, twenty-six local
17 jurisdictions in four states--California, Colorado,
18 Massachusetts, and Minnesota--have enacted legislation to
19 prohibit the sale of flavored tobacco products, including
20 menthol. The legislature concludes that Hawaii should also take
21 steps to regulate flavored tobacco products to reduce tobacco-



1 related health disparities and address the youth vaping
2 epidemic.

3 Accordingly, the purpose of this Act is to prohibit the
4 sale or distribution of all flavored tobacco products in the
5 State. This Act shall be known and may be cited as the
6 Reversing the Youth Tobacco Epidemic Act of 2020.

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

10 "§712- Sale or advertising of tobacco products;
11 flavored; nicotine-free. (1) Beginning January 1, 2021, it
12 shall be unlawful for any retailer or any agents or employees of
13 the retailer to:

- 14 (a) Sell, offer for sale, or possess with the intent to
15 sell or offer for sale, a flavored tobacco product;
- 16 (b) Mislabeled as nicotine-free, or sell or market for sale
17 as nicotine-free, any e-liquid product that contains
18 nicotine; or
- 19 (c) Market, advertise, or promote any electronic smoking
20 device in a manner that is designed to appeal to an
21 individual under twenty-one years of age.



1 (2) A statement or claim directed to consumers or the
2 public that the tobacco product is flavored, including text,
3 color, or images on the tobacco product's labeling or packaging
4 that is used to explicitly or implicitly communicate that the
5 tobacco product has a flavor other than tobacco made by a
6 retailer or manufacturer or an agent or employee of the retailer
7 or manufacturer in the course of the person's agency or
8 employment, is prima facie evidence that the tobacco product is
9 a flavored tobacco product.

10 (3) Any flavored tobacco product found in the retailer's
11 possession that is in violation of this section shall be
12 considered contraband, promptly seized, subject to immediate
13 forfeiture and destruction and shall not be subject to the
14 procedures set forth in chapter 712A.

15 (4) For the first offense, any retailer that violates this
16 section may be fined not more than \$500 and any agent or
17 employee of the retailer who knowingly violates this section may
18 be fined not more than \$500. Any subsequent offenses shall
19 subject the offender to a fine of not less than \$500 nor more
20 than \$2,000. Each flavored tobacco product in the retailer's
21 possession shall be considered a separate violation of this



1 section. All fines shall be paid to the department of health
2 and deposited into the Hawaii tobacco prevention and control
3 trust fund established pursuant to section 328L-5.

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

11 (6) For the purposes of this section:

12 "Distinguishable" means perceivable by either the sense of
13 smell or taste.

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. The term "e-liquid" shall not
18 include prescription drugs; medical cannabis or manufactured
19 cannabis products pursuant to chapter 329D; or medical devices
20 used to aerosolize, inhale, or ingest prescription drugs,



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

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

9 "Entity" means one or more individuals, a company,
10 corporation, a partnership, an association, or any other type of
11 legal entity.

12 "Flavored tobacco product" means any tobacco product that
13 contains a taste or smell, other than the taste or smell of
14 tobacco, that is distinguishable by a consumer either prior to
15 or during the consumption of a tobacco product, including but
16 not limited to any mentholated tobacco product or a product that
17 contains a taste or smell relating to fruit, mint, menthol,
18 wintergreen, chocolate, cocoa, vanilla, honey, any candy,
19 dessert, alcoholic beverage, herb, or spice.

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



1 "Packaging" means a pack, box, carton, or container of any
2 kind, or if no other container, any wrapping, including
3 cellophane, in which a tobacco product is sold or offered for
4 sale to a consumer.

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

9 "Tobacco product" means any product made or derived from
10 tobacco that contains nicotine or other substances and is
11 intended for human consumption or is likely to be consumed,
12 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or
13 ingested by other means. "Tobacco product" includes but is not
14 limited to a cigarette, cigar, pipe tobacco, chewing tobacco,
15 snuff, snus, e-liquid, or an electronic smoking device.

16 "Tobacco product" does not include drugs, devices, or
17 combination products approved for sale by the United States Food
18 and Drug Administration, as those terms are defined in the
19 Federal Food, Drug, and Cosmetic Act.

20 "Tobacco retail location" means any premises where tobacco
21 products are sold or distributed to a consumer, including but



1 not limited to any store, bar, lounge, cafe, stand, outlet,
2 vehicle, cart, location, vending machine, or structure."

3 SECTION 3. Section 328L-5, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (a) to read:

6 "(a) There is established the Hawaii tobacco prevention
7 and control trust fund as a separate fund of a nonprofit entity
8 having a board of directors and qualifying under section
9 501(c)(3) of the Internal Revenue Code of 1986, as amended, into
10 which shall be deposited moneys received as provided under
11 section 328L-2(b)(2) [-] and section 712- . The director of
12 health with the concurrence of the governor, shall select, in
13 accordance with law, the entity based upon the proven record of
14 accomplishment of the entity in administering a similar trust
15 fund."

16 2. By amending subsection (e) to read:

17 "(e) The assets of the Hawaii tobacco prevention and
18 control trust fund shall consist of:

19 (1) Moneys appropriated under section 328L-2(b)(2);



- 1 (2) Moneys appropriated to the Hawaii tobacco prevention
2 and control trust fund by the state, county, or
3 federal government;
- 4 (3) Private contributions of cash or property; [~~and~~]
- 5 (4) Income and capital gains earned by the trust fund[~~-~~];
6 and
- 7 (5) Moneys deposited into the Hawaii tobacco prevention
8 and control trust fund pursuant to section 712- ."

9 SECTION 4. Section 712-1258, Hawaii Revised Statutes, is
10 amended by amending subsection (6) to read as follows:

11 "(6) Any person who violates subsection (1) or (4), or
12 both, shall be fined \$500 for the first offense. Any subsequent
13 offenses shall subject the person to a fine not less than \$500
14 nor more than \$2,000. Any person under twenty-one years of age
15 who violates subsection (5) [~~shall be~~]:

16 (a) For the first offense, shall:

17 (i) Be fined \$10 for the first offense[~~-Any~~];

18 (ii) Complete a tobacco education program or a tobacco
19 use cessation program approved by the director of
20 health; or



1 (iii) Perform three hours of community service during
2 hours when the person is not employed and is not
3 attending school; and

4 (b) For any subsequent offense, shall [subject]:

5 (i) Subject the violator to a fine of \$50, no part of
6 which shall be suspended[7]; or [the person shall
7 be required to perform]

8 (ii) Perform not less than forty-eight hours nor more
9 than seventy-two hours of community service
10 during hours when the person is not employed and
11 is not attending school[-];

12 provided that if the person is under eighteen years of age, that
13 person's parent or guardian shall be notified of the offense and
14 given fifteen days to select which penalty shall be imposed on
15 the person and if no selection is made within fifteen days, the
16 court shall impose a fine pursuant to paragraph (a) (i) or
17 (b) (i).

18 Any tobacco product or electronic smoking device, as those
19 terms are defined in subsection (7), in the person's possession
20 at the time of violation of subsection (5) shall be seized,
21 summarily forfeited to the State, and destroyed by law



1 enforcement following the conclusion of an administrative or
2 judicial proceeding finding that a violation of subsection (5)
3 has been committed. The procedures set forth in chapter 712A
4 shall not apply to this subsection."

5 SECTION 5. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 6. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 7. This Act shall take effect on July 1, 2020.



Report Title:

Flavored Tobacco Products; Electronic Smoking Devices; Sale; Ban

Description:

Bans the sale of flavored tobacco products. Prohibits mislabeling of e-liquid products containing nicotine. Establishes fines and penalties for violations. Authorizes a court to impose, as a penalty on a person eighteen to twenty-one years of age who is convicted of possession of a tobacco product or electronic smoking device, the requirement to complete a tobacco education program, complete a tobacco use cessation program, or perform community service instead of paying a fine. Requires a parent or guardian of a minor to select from among the penalties for a minor convicted of possession of a tobacco product or electronic smoking device. Effective 7/1/2020.
(SD1)

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