
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 Hawai'i. 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 Hawai'i's youth. Vaping in
17 Hawai'i 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 Hawai'i, Maui, and Kaua'i. These
6 rates 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. Hawai'i 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 menthol, a growing number
20 of jurisdictions, including San Francisco; Berkeley; Chicago;
21 Minneapolis; and Providence, Rhode Island, have introduced and



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

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

8 SECTION 2. Chapter 712, Hawaii Revised Statutes, is
9 amended by adding a new section to part IV 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, 2021, it shall be
13 unlawful for any retailer or any agents or employees 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 which contains
19 nicotine.

20 (2) A statement or claim directed to consumers or the
21 public that the tobacco product has or produces a characterizing



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

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

15 (4) Any retailer and any agents or employees of the
16 retailer who violate this section shall be sentenced to a fine
17 not exceeding \$500. Any subsequent offenses shall subject the
18 offender to a fine of not less than \$500 nor more than \$2,000.

19 (5) Notwithstanding any other law to the contrary, any
20 county may adopt a rule or ordinance that places greater
21 restrictions on the access to flavored tobacco products than



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

5 (6) For the purposes of this section:

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

17 "Cigarette" means any roll for smoking made wholly or in
18 part of tobacco, irrespective of size and shape and whether or
19 not the tobacco is flavored, adulterated, or mixed with any
20 other ingredient, the wrapper or cover of which is made of paper
21 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 the person inhaling from the device, including but
11 not limited to an electronic cigarette, electronic cigar,
12 electronic cigarillo, or electronic pipe, and any e-liquid,
13 cartridge, or 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. The term "e-liquid" does not
18 include prescription drugs; medical cannabis or manufactured
19 cannabis products; or medical devices used to inhale or ingest
20 prescription drugs, including devices sold at a licensed medical
21 cannabis dispensary.



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

4 "Flavored tobacco product" means any tobacco product that
5 contains a constituent that imparts a characterizing flavor.

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

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

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

16 "Tobacco product" means any product made or derived from
17 tobacco that contains nicotine or other substances and is
18 intended for human consumption or is likely to be consumed,
19 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or
20 ingested by other means. "Tobacco product" includes but is not
21 limited to a cigarette, cigar, pipe tobacco, chewing tobacco,



1 snuff, snus, e-liquid, or an electronic smoking device.
2 "Tobacco product" does not include drugs, devices, or
3 combination products approved for sale by the United States Food
4 and Drug Administration, as those terms are defined in the
5 Federal Food, Drug, and Cosmetic Act.

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

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

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

19 SECTION 5. New statutory material is underscored.

20 SECTION 6. This Act shall take effect on January 1, 2021.



Report Title:

Flavored Tobacco Products; Sale; Ban

Description:

Bans the sale of flavored tobacco products. Effective
January 1, 2021. (SD1)

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

