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



1 from smoking, thus making menthol cigarettes an appealing option
2 for youth who are initiating tobacco use. Candy and fruit
3 flavors improve the taste and reduce the harshness of tobacco
4 products, making them more appealing and easier for beginners to
5 try tobacco products and ultimately become addicted. The
6 popularity of electronic cigarettes among youth is concerning,
7 as these products contain nicotine. The United States Surgeon
8 General noted in the 2016 report titled "E-Cigarette Use Among
9 Youth and Youth Adults" that "[b]ecause the adolescent brain is
10 still developing, nicotine use during adolescence can disrupt
11 the formation of brain circuits that control attention,
12 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 (ESDs) 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 ESDs increased 6-fold
19 among middle school youth and 4-fold among high school youth.
20 In 2017, twenty-seven per cent of middle school and forty-two
21 per cent of public high school students tried ESDs. Today,



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

8 The legislature further finds that a 2009 federal law, the
9 Family Smoking Prevention and Tobacco Control Act, prohibited
10 characterizing flavors, including fruit and candy flavorings, in
11 cigarettes but did not ban menthol in cigarettes or the use of
12 characterizing flavors in other tobacco products. Only
13 cigarettes, roll-your-own tobacco, and smokeless tobacco are
14 subject to regulation under this Act. The tobacco industry and
15 electronic smoking device industry have since significantly
16 increased the introduction and marketing of flavored non-
17 cigarette tobacco products, especially ESDs. It is no
18 coincidence that the number of electronic cigarette flavors have
19 skyrocketed in recent years, with more than 15,500 unique
20 e-cigarette flavors identified in a 2018 study. Hawai'i has
21 experienced the heightened promotion of vape products that offer



1 candy and local flavors designed to appeal to the State's youth,
2 such as candy, fruit, chocolate, mint, Kona coffee, Maui Mango,
3 Shaka strawberry, and Moloka'i hot bread. Additionally, many of
4 the packages are designed to look like popular kids candies,
5 such as Jolly Ranchers and Sour Patch Kids. The legislature
6 additionally finds that young people are disproportionately
7 using flavored tobacco products.

8 Given the significant threat to public health posed by
9 flavored tobacco products, a growing number of jurisdictions,
10 including San Francisco, Berkeley, Chicago, Minneapolis and
11 Providence, Rhode Island, have introduced and passed legislation
12 to regulate the sale of flavored tobacco products. The
13 legislature concludes that Hawai'i should also take steps to
14 regulate these products to reduce tobacco-related health
15 disparities and address the youth vaping epidemic.

16 Accordingly, the purpose of this Act is to:

- 17 (1) Prohibit the sale of cigarettes, tobacco products,
18 electronic smoking devices, or e-liquids that:
- 19 (A) Are in violation of United States Food and Drug
20 Administration requirements on labeling and
21 warnings; or



- 1 (B) Appears to market toward children.
- 2 (2) Prohibit the sale or distribution of all flavored
- 3 tobacco products, except menthol or mentholated
- 4 products, in the State of Hawaii.

5 SECTION 2. Chapter 328J, Hawaii Revised Statutes, is
 6 amended by adding a new section to be appropriately designated
 7 and to read as follows:

8 "§328J- Unlawful labeling and advertising of cigarettes
 9 and tobacco products. (a) Beginning January 1, 2020, it shall
 10 be unlawful for any retailer or any agents or employees of the
 11 retailer to sell, offer for sale, or possess with the intent to
 12 sell or offer for sale, a cigarette, tobacco product, electronic
 13 smoking device, or e-liquid that:

- 14 (1) Does not meet the requirements of the United States
 15 Food and Drug Administration on labeling and warnings;
 16 or
- 17 (2) Appears to be marketed toward children, would be
 18 appealing to children, or which imitates or resembles
 19 any food product that is marketed for children, which
 20 includes cartoon images, and names that bears
 21 resemblance to candy, cereal, cookies, or snacks.



1 (b) For the purposes of this section:

2 "E-liquid" means any liquid or like substance, which may or
3 may not contain nicotine, that is designed or intended to be
4 used in an electronic smoking device, whether or not packaged in
5 a cartridge or other container. The term "e-liquid" does not
6 include prescription drugs; medical cannabis or manufactured
7 cannabis products; or medical devices used to inhale or ingest
8 prescription drugs, including devices sold at a licensed medical
9 cannabis dispensary.

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 for any form of consideration
18 tobacco products to consumers. The term "retailer" includes the
19 owner of a tobacco retail location."



1 SECTION 3. 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. (1)

5 Beginning July 1, 2050, it shall be unlawful for any retailer or
6 any agents or employees of the retailer to

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

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

13 (2) There shall be a rebuttable presumption that a tobacco
14 product is a flavored tobacco product if a manufacturer or an
15 agent or employee of the manufacturer, in the course of the
16 person's agency or employment, has made a statement or claim
17 directed to consumers or the public that the tobacco product has
18 or produces a characterizing flavor, including but not limited
19 to text, color, images, or all, on the tobacco product's
20 labeling or packaging that are used to explicitly or implicitly



1 communicate that the tobacco product has a characterizing
2 flavor.

3 (3) Any tobacco product or electronic smoking device that
4 is found in the retailer's possession that violates this section
5 shall be seized at the time of violation. Such products shall
6 be summarily forfeited to the State, and destroyed by law
7 enforcement following the conclusion of an administrative or
8 judicial proceeding finding that a violation of this section has
9 been committed.

10 (4) Any person who violates this section may be sentenced
11 to pay a fine not exceeding \$500 for the first offense. Any
12 subsequent offenses shall subject the person to a fine not less
13 than \$500 nor more than \$2,000.

14 (5) Any county may adopt a rule or ordinance that places
15 greater restrictions on the access of tobacco products than
16 provided for in this section. In the case of a conflict between
17 the restrictions in this section and any county rule or
18 ordinance regarding access to tobacco products, the more
19 stringent restriction shall prevail.

20 (6) For the purposes of this section:



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

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

17 "Constituent" means any ingredient, substance, chemical, or
18 compound, other than tobacco, water, or reconstituted tobacco
19 sheet, that is added by the manufacturer to a tobacco product
20 during the processing, manufacture, or packing of the tobacco
21 product.



1 "Distinguishable" means perceivable by either the sense of
2 smell or taste.

3 "Electronic smoking device" has the same meaning as defined
4 in section 712-1258(7).

5 "E-liquid" means any liquid or like substance, which may or
6 may not contain nicotine, that is designed or intended to be
7 used in an electronic smoking device, whether or not packaged in
8 a cartridge or other container. The term "e-liquid" does not
9 include prescription drugs; medical cannabis or manufactured
10 cannabis products; or medical devices used to inhale or ingest
11 prescription drugs, including devices sold at a licensed medical
12 cannabis dispensary.

13 "Flavored tobacco product" means any tobacco product that
14 contains a constituent that imparts a characterizing flavor,
15 except for menthol or mentholated products.

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

18 "Packaging" means a pack, box, carton, or container of any
19 kind, or if no other container, any wrapping, including
20 cellophane, in which a tobacco product is sold or offered for
21 sale to a consumer.



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

5 "Tobacco product" has the same meaning as defined in
6 section 712-1258(7).

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

11 SECTION 4. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 5. If any provision of this Act, or the
15 application thereof to any person or circumstance, is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

20 SECTION 6. New statutory material is underscored.

21 SECTION 7. This Act shall take effect on July 1, 2050.



Report Title:

Flavored Tobacco Products; Sale; Ban; Keiki Caucus

Description:

Prohibits the sale of cigarettes, tobacco products, electronic smoking devices, or e-liquids that are in violation of federal FDA labeling requirements or that market toward children. Bans the sale of flavored tobacco products except for menthol or mentholated products. Prohibits mislabeling of e-liquid products containing nicotine. Establishes fines and penalties for violations. (HB276 HD2)

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