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# 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.

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 "because the  
10 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 (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 six-fold  
19 among middle school youth and four-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. The fact that these  
5 rates are higher than the national average demonstrates a  
6 disturbing trend of youth nicotine use and threatens the  
7 historic decline achieved in 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 candies popular with  
5 children, such as Jolly Ranchers and Sour Patch Kids. The  
6 legislature additionally finds that young people are  
7 disproportionately using flavored tobacco products, including  
8 menthol. According to the 2010 study, "Smoking and Tobacco Use  
9 in Hawai'i," seventy-eight per cent of Native Hawaiian/Pacific  
10 Islander adult smokers and forty-two per cent of White adult  
11 smokers consume menthol cigarettes. A 2008 study also indicated  
12 the high use of menthol cigarettes among Filipino adults.  
13 Conservative estimates noted in a 2011 paper suggest that over  
14 300,000 deaths nationally can be averted by the year 2050, if  
15 menthol cigarette smoking is eliminated.

16       Given the significant threat to public health posed by  
17 flavored tobacco products, including menthol, a growing number  
18 of jurisdictions, including San Francisco, Berkeley, Chicago,  
19 Minneapolis and Providence, Rhode Island, have introduced and  
20 passed legislation to regulate the sale of flavored tobacco  
21 products. The legislature concludes that Hawai'i should also



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

3 Accordingly, the purpose of this Act is to prohibit the  
4 sale or distribution of all flavored tobacco products, including  
5 products with menthol, in the State of Hawai'i.

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

9 "§712- Sale of flavored tobacco products; mislabeling as  
10 nicotine-free. (1) Beginning January 1, 2021, it shall be  
11 unlawful for any retailer or any agents or employees of the  
12 retailer to:

13 (a) Sell, offer for sale, or possess with the intent to  
14 sell or offer for sale, a flavored tobacco product;  
15 or

16 (b) Mislabel as nicotine-free, or sell or market for sale  
17 as nicotine-free, any e-liquid product which contains  
18 nicotine.

19 (2) A statement or claim directed to consumers or the  
20 public that the tobacco product has or produces a characterizing  
21 flavor, including but not limited to text, color, or images on



1 the tobacco product's labeling or packaging that is used  
2 explicitly or implicitly to communicate that the tobacco product  
3 has a characterizing flavor made by a manufacturer or an agent  
4 or employee of the manufacturer in the course of the person's  
5 agency or employment, is prima facie evidence that the tobacco  
6 product is a flavored tobacco product.

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

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

18 (5) Notwithstanding any other law to the contrary, any  
19 county may adopt a rule or ordinance that places greater  
20 restrictions on the access to flavored tobacco products than  
21 provided for in this section. In the case of a conflict between



1 the restrictions in this section and any county rule or  
2 ordinance regarding access to flavored tobacco products, the  
3 more stringent restrictions shall prevail.

4 (6) For the purposes of this section:

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

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 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 company,  
2       corporation, a partnership, an association, or any other type of  
3       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.

21



**Report Title:**

Flavored Tobacco Products; Sale; Ban

**Description:**

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

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

