A BILL FOR AN ACT

RELATING TO FLAVORED TOBACCO PRODUCTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

SECTION 1. The legislature finds that tobacco use remains the leading cause of preventable disease and death in the United States and in Hawaii. Tobacco use is a serious public health problem in terms of the human suffering and loss of life it causes, as well as the financial burden it imposes on society and the State's healthcare system. Annually, $526,000,000 in health care costs are directly attributed to smoking in the State.

The legislature also recognizes that ninety-five per cent of all smokers start before the age of twenty-one. Eighty-one per cent of youth who have ever used a tobacco product report that the first tobacco product they used was flavored. Flavored tobacco products promote youth initiation of tobacco use and help young occasional smokers become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke, thereby increasing the appeal of tobacco products.
The popularity of electronic cigarettes among youth is concerning, as these products contain nicotine. The United States Surgeon General noted in the 2016 report titled "E-Cigarette Use Among Youth and Youth Adults" that "because the adolescent brain is still developing, nicotine use during adolescence can disrupt the formation of brain circuits that control attention, learning, and susceptibility to addiction."

The legislature further finds that while there has been a decline in the use of combustible cigarettes over the last decade, there has been a dramatic increase in the use of electronic smoking devices (ESDs) by Hawaii's youth. Vaping in Hawaii has reached epidemic levels. Between 2011 to 2015, the proportion of youth experimenting with ESDs increased six-fold among middle school youth and four-fold among high school youth. In 2017, twenty-seven per cent of middle school and forty-two per cent of public high school students tried ESDs. Today, sixteen per cent of middle school and more than a quarter of high school students vape. Current use of ESDs by county is even more problematic, with figures exceeding thirty per cent on the islands of Hawaii, Maui, and Kauai. The fact that these rates are higher than the national average and demonstrates a
disturbing trend of youth nicotine use and threatens the historic decline achieved in combustible cigarette use.

The legislature further finds that a 2009 federal law, the Family Smoking Prevention and Tobacco Control Act, prohibited characterizing flavors, including fruit and candy flavorings, in cigarettes but did not ban the use of characterizing flavors in other tobacco products. Only cigarettes, roll-your-own tobacco, and smokeless tobacco are subject to regulation under the federal Act. The tobacco industry and electronic smoking device industry have since significantly increased the introduction and marketing of flavored non-cigarette tobacco products, especially ESDs. It is no coincidence that the number of electronic cigarette flavors have skyrocketed in recent years, with more than 15,500 unique e-cigarette flavors identified in a 2018 study. Hawaii has experienced the heightened promotion of vape products that offer candy and local flavors designed to appeal to the State's youth, such as candy, fruit, chocolate, mint, Kona coffee, Maui mango, Shaka strawberry, and Molokai hot bread. Additionally, many of the packages are designed to look like candies popular with children, such as Jolly Ranchers and
Sour Patch Kids. The legislature additionally finds that young people are disproportionately using flavored tobacco products. Given the significant threat to public health posed by flavored tobacco products a growing number of jurisdictions, including San Francisco, Berkeley, Chicago, Minneapolis, and Providence, Rhode Island, have introduced and passed legislation to regulate the sale of flavored tobacco products. The legislature concludes that Hawaii should also take steps to regulate these products to reduce tobacco-related health disparities and address the youth vaping epidemic.

Accordingly, the purpose of this Act is to prohibit the sale or distribution of all flavored tobacco products in the State of Hawaii.

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

"§712- Sale of flavored tobacco products; mislabeling as nicotine-free. (1) Beginning January 1, 2021, it shall be unlawful for any retailer or any agents or employees of the retailer to:
(A) Sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product; or

(B) Mislable as nicotine-free, or sell or market for sale as nicotine-free, any e-liquid product that contains nicotine.

(2) A statement or claim directed to consumers or the public that the tobacco product has or produces a characterizing flavor, including but not limited to text, color, or images on the tobacco product's labeling or packaging that is used explicitly or implicitly to communicate that the tobacco product has a characterizing flavor made by a manufacturer or an agent or employee of the manufacturer in the course of the person's agency or employment, is prima facie evidence that the tobacco product is a flavored tobacco product.

(3) Any flavored tobacco product found in the retailer's possession that is in violation of this section shall be considered contraband, promptly seized, summarily forfeited to the State, destroyed by law enforcement following the conclusion of an administrative or judicial proceeding finding that a violation of this section has been committed, and shall not be subject to the procedures set forth in chapter 712A.
(4) Any retailer and any agent or employee of the retailer who violates this section shall be sentenced to a fine not exceeding $500. Any subsequent offenses shall subject the offender to a fine of not less than $500 nor more than $2,000.

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

(6) For the purposes of this section:
"Characterizing flavor" means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco or menthol, imparted by a tobacco product or any byproduct produced by the tobacco product. "Characterizing flavors" include but are not limited to tastes or aromas relating to any candy, chocolate, vanilla, honey, fruit, cocoa, coffee, dessert, alcoholic beverage, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or
the provision of ingredient information in the absence of a
distinguishable taste or aroma, or both.

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

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

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

"Electronic smoking device" means any electronic product
that can be used to aerosolize and deliver nicotine or other
substances to the person inhaling from the device, including but
not limited to an electronic cigarette, electronic cigar,
electronic cigarillo, or electronic pipe, and any e-liquid,
cartridge or other component of the device or related product.
"E-liquid" means any liquid or like substance, which may or may not contain nicotine, that is designed or intended to be used in an electronic smoking device, whether or not packaged in a cartridge or other container. "E-liquid" does not include any liquid or like substance designed or intended to be used in an electronic smoking device that has a distinguishable taste or aroma of tobacco or menthol; prescription drugs; medical cannabis or manufactured cannabis products; or medical devices used to inhale or ingest prescription drugs, including devices sold at a licensed medical cannabis dispensary.

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

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

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

"Packaging" means a pack, box, carton, or container of any kind, or if no other container, any wrapping, including cellophane, in which a tobacco product is sold or offered for sale to a consumer.
"Retailer" means an entity who sells, offers for sale, or exchanges or offers to exchange for any form of consideration tobacco products to consumers. The term "retailer" includes the owner of a tobacco retail location.

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

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

"Tobacco retail location" means any premises where tobacco products are sold or distributed to a consumer, including but not limited to any store, bar, lounge, cafe, stand, outlet, vehicle, cart, location, vending machine, or structure."
SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2050.
Report Title:
Flavored Tobacco Products; E-Liquid; Sale; Ban; Penalties; Violations

Description:
Bans the sale of flavored tobacco products, except for menthol and liquid or like substances with a distinguishable taste or aroma of tobacco or menthol. Prohibits the mislabeling, sale, or marketing as nicotine-free any e-liquid product that contains nicotine. Specifies penalties for violations. Takes effect on 7/1/2050. (HD1)

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