

JAN 18 2019

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,



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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 by 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, including menthol. According
8 to the 2010 study Smoking and Tobacco Use in Hawaii, seventy-
9 eight per cent of Native Hawaiian/Pacific Islander adult smokers
10 and forty-two per cent of White adult smokers consume menthol
11 cigarettes. A 2008 study also indicated the high use of menthol
12 cigarettes among Filipino adults. Conservative estimates noted
13 in a 2011 paper suggest that over 300,000 deaths can be averted
14 by the year 2050, if menthol cigarette smoking is eliminated.

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



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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 Hawaii.

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

9 "§712- Sale of flavored tobacco products. (1)

10 Beginning January 1, 2020, it shall be unlawful for any retailer
11 or any agents or employees of the retailer to sell, offer for
12 sale, or possess with the intent to sell or offer for sale, a
13 flavored tobacco product.

14 (2) There shall be a rebuttable presumption that a tobacco
15 product is a flavored tobacco product if a manufacturer or an
16 agent or employee of the manufacturer, in the course of the
17 person's agency or employment, has made a statement or claim
18 directed to consumers or the public that the tobacco product has
19 or produces a characterizing flavor, including but not limited
20 to text, color, images, or all, on the tobacco product's
21 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 in
4 the retailer's possession at the time of violation of this
5 section shall be seized, summarily forfeited to the State, and
6 destroyed by law enforcement following the conclusion of an
7 administrative or judicial proceeding finding that a violation
8 of this section has been committed.

9 (4) Any person who violates this section may be fined as
10 provided in section 712-1258(6) by the enforcing agency.

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

17 (6) For the purposes of this section:

18 "Characterizing flavor" means a distinguishable taste or
19 aroma, or both, other than the taste or aroma of tobacco,
20 imparted by a tobacco product or any byproduct produced by the
21 tobacco product. Characterizing flavors include but are not



1 limited to tastes or aromas relating to any candy, chocolate,
2 vanilla, honey, fruit, cocoa, coffee, dessert, alcoholic
3 beverage, menthol, mint, wintergreen, herb, or spice. A tobacco
4 product shall not be determined to have a characterizing flavor
5 solely because of the use of additives or flavorings or the
6 provision of ingredient information in the absence of a
7 distinguishable taste or aroma, or both.

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

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

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

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



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

9 "Enforcing agency" means the department of the attorney
10 general, another state agency including but not limited to the
11 department of health, or a local law enforcement agency
12 including but not limited to a prosecuting attorney or county
13 counsel.

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

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 3. 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 4. This Act shall be liberally construed to
15 accomplish the purpose set forth in section 2 of this Act.

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



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1 SECTION 6. New statutory material is underscored.
2 SECTION 7. This Act shall take effect on January 1, 2020.

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Report Title:

Flavored Tobacco Products; Sale; Ban; Keiki Caucus

Description:

Bans the sale of flavored tobacco products. Effective 1/1/2020.

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