A BILL FOR AN ACT

RELATING TO FLAVORED TOBACCO PRODUCTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that tobacco use remains the leading cause of preventable disease and death in the United States and in Hawai‘i. 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 our 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.

Candy and fruit flavors improve the taste and reduce the harshness of tobacco products, making them more appealing and
easier for beginners to try tobacco products and ultimately become addicted. 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 Young Adults" that "[b]ecause 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 by Hawai‘i’s youth. Vaping in Hawai‘i has reached epidemic levels. Between 2011 to 2015, the proportion of youth experimenting with electronic smoking devices 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 electronic smoking devices. Today, sixteen per cent of middle school and more than a quarter of high school students vape. Current use of electronic smoking devices by county is even more problematic, with figures exceeding thirty
per cent on the islands of Hawai‘i, Maui, and Kaua‘i. These
rates are higher than the national average and demonstrate a
disturbing trend of youth nicotine use and threaten 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 this Act.
The tobacco industry and electronic smoking device industry have
since significantly increased the introduction and marketing of
flavored non-cigarette tobacco products, especially electronic
smoking devices. It is no coincidence that the number of
electronic cigarette flavors has skyrocketed in recent years,
with more than 15,500 unique e-cigarette flavors identified in a
2018 study. Hawai‘i 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 Moloka‘i hot
bread. Additionally, many of the packages are designed to look
like popular kids candies, 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 have introduced and passed legislation to regulate the sale of flavored tobacco products. The legislature concludes that Hawai'i 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 Hawai'i.

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

"§712- Sale of flavored tobacco products. (1) Beginning January 1, 2020, 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, except for menthol or mentholated products; or

(B) Mislabel as nicotine-free, or sell or market for sale as nicotine-free, any e-liquid product which 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 to explicitly or implicitly 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, subject to immediate forfeiture and destruction and shall not be subject to the procedures set forth in chapter 712A.
(4) Any retailer and any agents or employees of the retailer who violate this section may 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, 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" has the same meaning as defined
in section 712-1258(7).

"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. The term "e-liquid" does not
include 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 or e-liquids to consumers. The term "retailer"
includes the owner of a tobacco retail location.

"Tobacco product" has the same meaning as defined in
section 712-1258(7).
"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; Sale; Ban; Keiki Caucus

Description:
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. (SB1009 HD2)

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