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 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. Menthol in particular is used by the tobacco industry because it has a cooling and numbing effect and can reduce the throat irritation
from smoking, thus making menthol cigarettes an appealing option for youth who are initiating tobacco use. 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 Youth 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 (ESDs) by Hawaii's youth. Vaping in Hawaii has reached epidemic levels. Between 2011 to 2015, the proportion of youth experimenting with ESDs increased 6-fold among middle school youth and 4-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 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 menthol in cigarettes or 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 ESDs. 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, including menthol. According to the 2010 study titled "Smoking and Tobacco Use in Hawai'i", seventy-eight per cent of Native Hawaiian/Pacific Islander adult smokers and forty-two per cent of white adult smokers consume menthol cigarettes. A 2008 study also indicated the high use of menthol cigarettes among Filipino adults. Conservative estimates noted in a 2011 paper suggest that over 300,000 deaths can be averted by the year 2050 if menthol cigarette smoking is eliminated.

Given the significant threat to public health posed by flavored tobacco products, including menthol, 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, including products with menthol, 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 sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product.

(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, images, or all, on the tobacco product's labeling or packaging that are 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 whose agents or employees violate this section may be sentenced to a fine not exceeding $500. Any subsequent offenses shall subject the person to a fine of not less than $500 nor more than $2,000.

(5) Any county may adopt a rule or ordinance that places greater restrictions on the access of 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 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, menthol, 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.

"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" 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 January 1, 2020.
Report Title:
Flavored Tobacco Products; Sale; Ban; Keiki Caucus

Description:
Bans the sale of flavored tobacco products. Effective 1/1/2020. (SD2)

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