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# A BILL FOR AN ACT

RELATING TO FLAVORED PRODUCTS FOR ELECTRONIC SMOKING DEVICES.

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

1           SECTION 1. The legislature finds that there has been a  
2 dramatic increase in the use of electronic smoking devices by  
3 Hawaii's youth. Between 2011 to 2015, the proportion of youth  
4 experimenting with electronic smoking devices increased six-fold  
5 among middle school youth and four-fold among high school youth.  
6 In 2017, twenty-seven per cent of middle school students and  
7 forty-two per cent of public high school students tried  
8 electronic smoking devices. Today, sixteen per cent of middle  
9 school students and more than a quarter of high school students  
10 use electronic smoking devices.

11           Current use of electronic smoking devices by county is even  
12 more problematic, with figures exceeding thirty per cent on the  
13 islands of Hawaii, Maui, and Kauai. These rates are higher than  
14 the national average, demonstrate a disturbing trend of youth  
15 nicotine use, and threaten to undermine the historic decline in  
16 combustible cigarette use that has been achieved.



1           The legislature further finds that popularity of electronic  
2 cigarettes among youth is especially concerning because these  
3 products contain nicotine. On December 18, 2018, the United  
4 States Surgeon General made the unprecedented move of  
5 classifying the danger of youth usage of electronic smoking  
6 devices as an epidemic. The United States Surgeon General noted  
7 in the 2016 report titled, "E-Cigarette Use Among Youth and  
8 Young Adults", that "[b]ecause the adolescent brain is still  
9 developing, nicotine use during adolescence can disrupt the  
10 formation of brain circuits that control attention, learning,  
11 and susceptibility to addiction."

12           The legislature is also concerned with the number of severe  
13 lung injuries being reported nationally in 2019. Specifically,  
14 there are more than two thousand cases of severe lung injury  
15 associated with electronic cigarette use and over forty deaths  
16 nationwide. Hawaii has had four reported cases of severe lung  
17 injury, with potentially more on the horizon. The unregulated  
18 nature of electronic cigarettes is making it difficult for  
19 public health officials to determine the source and cause of  
20 these injuries.



1           The legislature also finds that a significant driver to  
2 increased youth use of electronic smoking devices is the  
3 availability of flavored products. While a 2009 federal law,  
4 the Family Smoking Prevention and Tobacco Control Act,  
5 prohibited characterizing flavors, including fruit and candy  
6 flavorings, in cigarettes, it did not ban the use of  
7 characterizing flavors in other tobacco products, such as  
8 electronic smoking devices.

9           The tobacco industry and electronic smoking device industry  
10 have in recent years significantly increased the introduction  
11 and marketing of flavored non-cigarette tobacco products for  
12 electronic smoking devices. Adding flavors to tobacco changes  
13 the taste and reduces the harshness of the otherwise unflavored  
14 tobacco product, making smoking more appealing and easier for  
15 beginners to try. According to a recent survey, eighty-one per  
16 cent of youth who used a tobacco product reported that the first  
17 tobacco product they used was flavored. Therefore, it is no  
18 coincidence that the number of electronic cigarette flavors has  
19 skyrocketed in recent years, with more than fifteen thousand  
20 unique electronic cigarette flavors identified in a 2018 study.



1           The legislature further finds that Hawaii has experienced  
2 the heightened promotion of electronic cigarette products that  
3 offer flavors designed to appeal to the State's youth, such as  
4 candy, fruit, chocolate, mint, Kona coffee, Maui mango, shaka  
5 strawberry, and Molokai hot bread. Additionally, many of the  
6 packages are designed to resemble popular candies, such as Jolly  
7 Ranchers and Sour Patch Kids.

8           Accordingly, the purpose of this Act is to:

- 9           (1) Establish the offense of unlawful shipment of e-liquid  
10           products;
- 11           (2) Prohibit the sale of flavored products for electronic  
12           smoking devices;
- 13           (3) Prohibit the mislabeling of e-liquid products  
14           containing nicotine;
- 15           (4) Prohibit the sale of electronic smoking devices, e-  
16           liquid, electronic smoking device accessories, and  
17           flavored products for electronic smoking devices other  
18           than through retail sales via a direct, in-person  
19           exchange between a retailer and consumer; and
- 20           (5) Include e-liquid and electronic smoking devices  
21           containing e-liquid within the definition of "tobacco



1 products", as used in the cigarette tax and tobacco  
2 tax law.

3 SECTION 2. Chapter 245, Hawaii Revised Statutes, is  
4 amended by adding a new section to part I to be appropriately  
5 designated and to read as follows:

6 "§245- Unlawful shipment of e-liquid products; penalty;  
7 reports; liability for unpaid taxes. (a) A person commits the  
8 offense of unlawful shipment of e-liquid products if the person:

9 (1) Is engaged in the business of selling e-liquid  
10 products; and  
11 (2) Ships or causes to be shipped any e-liquid products to  
12 a person or entity in this State that is not a  
13 licensee under this chapter.

14 (b) This section shall not apply to the shipment of  
15 e-liquid products if any of the following conditions is met:

16 (1) The e-liquid products are exempt from taxes as  
17 provided by section 245-3(b) or are otherwise exempt  
18 from the applicability of this chapter as provided by  
19 section 245-62; or



1       (2) All applicable state taxes on the e-liquid products  
2       are paid in accordance with the requirements of this  
3       chapter.

4       (c) Unlawful shipment of e-liquid products is a class C  
5       felony if, within a twelve-month period, the person or entity  
6       knowingly ships or causes to be shipped e-liquid products having  
7       a value of \$3,000 or more in violation of subsection (a).

8       (d) Unlawful shipment of e-liquid products is a  
9       misdemeanor if the person or entity knowingly ships or causes to  
10       be shipped e-liquid products having a value of less than \$3,000  
11       in violation of subsection (a).

12       (e) For the purposes of this section, a person is a  
13       licensee if the person or entity's name appears on a list of  
14       authorized licensees published by the department.

15       (f) Notwithstanding the existence of other remedies at  
16       law, any person that purchases, uses, controls, or possesses any  
17       e-liquid products for which the applicable taxes imposed under  
18       title 14 have not been paid, shall be liable for the applicable  
19       taxes, plus any penalty and interest as provided for by law.

20       (g) For the purpose of this section:



1       "E-liquid products" means e-liquid, electronic smoking  
2 devices containing e-liquid, or component parts containing  
3 e-liquid.

4       "Person" shall have the same meaning as in section 1-19.

5       "Value" means the fair market value at the time of the  
6 offense."

7       SECTION 3. Chapter 712, Hawaii Revised Statutes, is  
8 amended by adding a new section to part IV to be appropriately  
9 designated and to read as follows:

10       "§712-       Sale of flavored products for electronic smoking  
11 devices; mislabeling; nicotine-free; remote retail sales. (1)

12 Beginning July 1, 2020, it shall be unlawful for any retailer or  
13 any agents or employees of the retailer to:

14       (a)    Sell, offer for sale, or possess with the intent to  
15       sell or offer for sale, a flavored product for  
16       electronic smoking devices;

17       (b)    Mislabel as nicotine-free, or sell or market for sale  
18       as nicotine-free, any e-liquid product that contains  
19       nicotine; or

20       (c)    Sell electronic smoking devices, e-liquid, electronic  
21       smoking device accessories, and flavored products for



1           electronic smoking devices other than through retail  
2           sales via a direct, in-person exchange between a  
3           retailer and a consumer.

4           (2) A statement or claim directed to consumers or the  
5 public that an e-liquid or electronic smoking device accessory  
6 is flavored shall be prima facie evidence that the product is a  
7 flavored product for electronic smoking devices; provided that  
8 the statement or claim may include but not be limited to text,  
9 color, or images on the product's labeling or packaging that is  
10 used to explicitly or implicitly communicate that the product  
11 has a flavor made by a manufacturer or an agent or employee of  
12 the manufacturer in the course of the person's agency or  
13 employment.

14           (3) Any flavored product for electronic smoking devices  
15 found in a retailer's possession that is in violation of this  
16 section shall be considered contraband, promptly seized, and  
17 subject to immediate forfeiture and destruction, and shall not  
18 be subject to the procedures set forth in chapter 712A.

19           (4) Any retailer who violates this section may be  
20 sentenced to a fine of \$500 per day. Any subsequent offenses





1 shall subject the offender to a fine of not less than \$500 and  
2 not more than \$2,500 per day.

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

11 (6) For the purposes of this section:

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

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

16 "E-liquid" means any liquid or like substance, which may or  
17 may not contain nicotine, that is designed or intended to be  
18 used in an electronic smoking device, whether or not packaged in  
19 a cartridge or other container.

20 "Flavored product for electronic smoking devices" means any  
21 electronic smoking device product that contains a taste or smell



1 that is distinguishable by a consumer either prior to, or during  
2 the consumption of, a nicotine product, including but not  
3 limited to any taste or smell relating to fruit, menthol, mint,  
4 wintergreen, chocolate, cocoa, vanilla, honey, any candy,  
5 dessert, alcoholic beverage, herb, or spice.

6 "Labeling" means written, printed, pictorial, or graphic  
7 matter upon a 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 flavored product for electronic smoking  
11 devices is sold or offered for sale to a consumer.

12 "Retailer" means an entity that sells, offers for sale, or  
13 exchanges or offers to exchange for any form of consideration  
14 tobacco products, including electronic smoking devices,  
15 e-liquids, or electronic smoking device accessories, to  
16 consumers. The term "retailer" includes the owner of a tobacco  
17 retail location.

18 "Tobacco product" has the same meaning as defined in  
19 section 712-1258(7).

20 "Tobacco retail location" means any premises where tobacco  
21 products are sold or distributed to a consumer, including but



1 not limited to any store, bar, lounge, cafe, stand, outlet,  
2 vehicle, cart, location, vending machine, or structure."

3 SECTION 4. Section 245-1, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By adding three new definitions to be appropriately  
6 inserted and to read:

7 "E-liquid" means any liquid or like substance, which may  
8 or may not contain nicotine, that is designed or intended to be  
9 used in an electronic smoking device, whether or not packaged in  
10 a cartridge or other container. "E-liquid" does not include  
11 prescription drugs; medical cannabis or manufactured cannabis  
12 products under chapter 329D; or medical devices used to  
13 aerosolize, inhale, or ingest prescription drugs, including  
14 manufactured cannabis products manufactured or distributed in  
15 accordance with section 329D-10(a).

16 "Electronic smoking device" means any electronic product,  
17 or part thereof, that can be used by a person to simulate  
18 smoking in the delivery of nicotine or any other substance,  
19 intended for human consumption, through inhalation of vapor or  
20 aerosol from the product. "Electronic smoking device" includes  
21 an electronic cigarette, electronic cigar, electronic cigarillo,



1 electronic pipe, electronic hookah, vape pen or related product,  
2 and any cartridge or other component part of the device or  
3 product.

4 "Smoke" or "smoking" means inhaling, exhaling, burning,  
5 carrying, or possessing any lighted or heated tobacco product,  
6 or similar substance intended for human consumption, including  
7 the use of an electronic smoking device that creates an aerosol  
8 or vapor, in any manner or in any form."

9 2. By amending the definition of "tobacco products" to  
10 read:

11 ""Tobacco products" means [~~tobacco~~]:

12 (1) Tobacco in any form, other than cigarettes or little  
13 ~~cigars [; that is prepared or intended for consumption~~  
14 ~~or for personal use by humans, including large cigars~~  
15 ~~and any substitutes thereof other than cigarettes that~~  
16 ~~bear the semblance thereof, snuff, chewing or~~  
17 ~~smokeless tobacco, and smoking or pipe tobacco.]; or~~

18 (2) E-liquid,  
19 that is intended for human consumption, or is likely to be  
20 consumed, whether smoked, heated, chewed, absorbed, dissolved,  
21 inhaled, or ingested by other means. Tobacco products include



1 large cigars and any substitutes thereof other than cigarettes  
2 that bear the semblance thereof, pipe tobacco, chewing or  
3 smokeless tobacco, snuff, snus, e-liquid, electronic smoking  
4 devices containing e-liquid, component parts containing  
5 e-liquid, and related products."

6 SECTION 5. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9 SECTION 6. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 7. This Act shall take effect on July 1, 2020.



**Report Title:**

Flavored Products for Electronic Smoking Devices; Ban; Sales; Labeling; Retailer; Unlawful Shipment of E-liquid Products

**Description:**

Establishes the offense of unlawful shipment of e-liquid products. Beginning July 1, 2020, prohibits the sale of flavored products for electronic smoking devices, the mislabeling of e-liquid products containing nicotine, and the sale of tobacco products other than through retail sales via a direct, in-person exchange between a retailer and consumer. Establishes penalties. Includes e-liquid and electronic smoking devices containing e-liquid within the definition of "tobacco products", as used in the cigarette tax and tobacco tax law. (SD1)

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