

JAN 17 2020

A BILL FOR AN ACT

RELATING TO THE YOUTH VAPING EPIDEMIC.

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 Hawaii. Tobacco use is a serious public health
4 problem that results in loss of life and financial burdens on
5 society and the healthcare system. Annually, \$526,000,000 in
6 health care costs are directly attributed to smoking in the
7 State.

8 The legislature further finds that, while there has been a
9 decline in the use of combustible cigarettes over the last
10 decade, there has been a dramatic increase in the use of
11 electronic smoking devices by Hawaii's youth. Between 2011 to
12 2015, the proportion of youth experimenting with electronic
13 smoking devices increased six-fold among middle school youth and
14 four-fold among high school youth. In 2017, twenty-seven per
15 cent of middle school students and forty-two per cent of public
16 high school students tried electronic smoking devices. Today,
17 sixteen per cent of middle school students and more than a



1 quarter of high school students use electronic smoking devices.
2 Current use of electronic smoking devices by county is even more
3 problematic, with figures exceeding thirty per cent on the
4 islands of Hawaii, Maui, and Kauai. These rates are higher than
5 the national average, demonstrate a disturbing trend of youth
6 nicotine use, and threaten to undermine the historic decline in
7 combustible cigarette use that has been achieved.

8 The popularity of electronic cigarettes among youth is
9 especially concerning because these products contain nicotine.
10 The United States Surgeon General noted in the 2016 report
11 titled "E-Cigarette Use Among Youth and Young Adults" that
12 "[b]ecause the adolescent brain is still developing, nicotine
13 use during adolescence can disrupt the formation of brain
14 circuits that control attention, learning, and susceptibility to
15 addiction."

16 Use of an electronic smoking device also puts the user at
17 risk for lung injury and even death. Following more than one
18 thousand reported cases of lung injury and eighteen confirmed
19 deaths associated with the use of electronic cigarette or
20 "vaping" products nationwide, in 2019, the department of health
21 issued a health advisory urging everyone to stop vaping.



1 The legislature further finds that a significant driver to
2 increased youth use of electronic smoking devices is the
3 availability of flavored tobacco products. While a 2009 federal
4 law, 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. The tobacco industry and electronic
9 smoking device industry have in recent years significantly
10 increased the introduction and marketing of flavored non-
11 cigarette tobacco products for electronic smoking devices.

12 Adding flavoring to tobacco changes the taste and reduces
13 the harshness of the otherwise unflavored tobacco product,
14 making smoking more appealing and easier for beginners to try-
15 and ultimately become addicted. According to a recent survey,
16 eighty-one per cent of youth who have ever used a tobacco
17 product reported that the first tobacco product they used was
18 flavored.

19 It is no coincidence that the number of electronic
20 cigarette flavors has skyrocketed in recent years, with more
21 than fifteen thousand unique electronic cigarette flavors



1 identified in a 2018 study. Hawaii has experienced the
2 heightened promotion of electronic cigarette products that offer
3 flavors designed to appeal to the State's youth, such as candy,
4 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. The legislature additionally
8 finds that young people are disproportionately using flavored
9 tobacco products, including menthol. In Hawaii, seventy-eight
10 per cent of Native Hawaiians and Pacific Islanders and forty-two
11 per cent of Caucasian adult smokers consume menthol cigarettes.
12 Menthol cigarette use is high among Filipinos as well. Current
13 estimates predict that menthol cigarette smoking will contribute
14 to more than three hundred thousand deaths by 2050.

15 Given the significant threat to public health posed by
16 flavored tobacco products, including menthol, twenty-six local
17 jurisdictions in four states--California, Colorado,
18 Massachusetts, and Minnesota--have enacted legislation to
19 prohibit the sale of flavored tobacco products, including
20 menthol. The legislature concludes that Hawaii should also take
21 steps to regulate flavored tobacco products to reduce tobacco-



1 related health disparities and address the youth vaping
2 epidemic.

3 Accordingly, the purpose of this Act is to prohibit the
4 sale or distribution of all flavored tobacco products in the
5 State. This Act shall be known and may be cited as the
6 Reversing the Youth Tobacco Epidemic Act of 2020.

7 SECTION 2. Chapter 302A, Hawaii Revised Statutes, is
8 amended by adding a new section to subpart C of part II to be
9 appropriately designated and to read as follows:

10 "§302A- Safe harbor for disposal of electronic
11 cigarettes. (a) The department shall establish and administer
12 a safe harbor program by which persons under the age of twenty-
13 one may dispose of electronic cigarettes in their possession.
14 (b) Notwithstanding any law to the contrary, a person
15 under the age of twenty-one who disposes of an electronic
16 cigarette pursuant to a program established pursuant to this
17 section shall not be subject to any penalty relating to the
18 underage possession of electronic cigarettes arising out of
19 possession of the disposed electronic cigarette."



1 SECTION 3. Chapter 302A, Hawaii Revised Statutes, is
2 amended by adding a new section to subpart C of part IV to be
3 appropriately designated and to read as follows:

4 "§302A- Confiscation of electronic cigarettes. (a) A
5 teacher or educator at a public school shall confiscate an
6 electronic cigarette that is found in the possession of a
7 student who is under the age of twenty-one.

8 (b) Each public school shall coordinate with the
9 department of health for the proper disposal of electronic
10 cigarettes confiscated pursuant to subsection (a).

11 (c) No teacher or educator, nor the public school that
12 employs the teacher or educator, who acts or fails to act in
13 accordance with this section shall be liable in any court of law
14 for acting or failing to act in accordance with this section."

15 SECTION 4. Chapter 712, Hawaii Revised Statutes, is
16 amended by adding a new section to part IV to be appropriately
17 designated and to read as follows:

18 "§712- Sale or advertising of tobacco products; remote
19 retail sales; flavored; nicotine-free. (1) Beginning
20 January 1, 2021, it shall be unlawful for any retailer or any
21 agents or employees of the retailer to:



1 (a) Sell, offer for sale, or possess with the intent to
2 sell or offer for sale, a flavored tobacco product;

3 (b) Mislabeled as nicotine-free, or sell or market for sale
4 as nicotine-free, any e-liquid product that contains
5 nicotine; or

6 (c) Market, advertise, or promote any electronic smoking
7 device in a manner that is designed to appeal to an
8 individual under twenty-one years of age.

9 (2) A statement or claim directed to consumers or the
10 public that the tobacco product is flavored, including text,
11 color, or images on the tobacco product's labeling or packaging
12 that is used to explicitly or implicitly communicate that the
13 tobacco product has a flavor other than tobacco made by a
14 retailer or manufacturer or an agent or employee of the retailer
15 or manufacturer in the course of the person's agency or
16 employment, is prima facie evidence that the tobacco product is
17 a flavored tobacco product.

18 (3) Any flavored tobacco product found in the retailer's
19 possession that is in violation of this section shall be
20 considered contraband, promptly seized, subject to immediate



1 forfeiture and destruction and shall not be subject to the
2 procedures set forth in chapter 712A.

3 (4) For the first offense, any retailer that violates this
4 section may be fined not more than \$500 and any agent or
5 employee of the retailer who knowingly violates this section may
6 be fined not more than \$500. Any subsequent offenses shall
7 subject the offender to a fine of not less than \$500 nor more
8 than \$2,000. Each flavored tobacco product in the retailer's
9 possession shall be considered a separate violation of this
10 section. All fines shall be paid to the department of health
11 and deposited into the Hawaii tobacco prevention and control
12 trust fund established pursuant to section 328L-5.

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

20 (6) For the purposes of this section:



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

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

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

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

17 "Flavored tobacco product" means any tobacco product that
18 contains a taste or smell, other than the taste or smell of
19 tobacco, that is distinguishable by a consumer either prior to
20 or during the consumption of a tobacco product, including but
21 not limited to any mentholated tobacco product or a product that



1 contains a taste or smell relating to fruit, mint, menthol,
2 wintergreen, chocolate, cocoa, vanilla, honey, or any candy,
3 dessert, alcoholic beverage, herb, or spice.

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

6 "Packaging" means a pack, box, carton, or container of any
7 kind, or if no other container, any wrapping, including
8 cellophane, in which a tobacco product is sold or offered for
9 sale to a consumer.

10 "Retailer" means an entity that sells, offers for sale, or
11 exchanges or offers to exchange for any form of consideration
12 tobacco products or e-liquids to consumers. The term "retailer"
13 includes the owner of a tobacco retail location.

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

16 "Tobacco retail location" means any premises where tobacco
17 products are sold or distributed to a consumer, including but
18 not limited to any store, bar, lounge, cafe, stand, outlet,
19 vehicle, cart, location, vending machine, or structure."

20 SECTION 5. Section 712-1258, Hawaii Revised Statutes, is
21 amended by amending subsection (6) to read as follows:



1 "(6) Any person who violates subsection (1) or (4), or
2 both, shall be fined \$500 for the first offense. Any subsequent
3 offenses shall subject the person to a fine not less than \$500
4 nor more than \$2,000. Any person under twenty-one years of age
5 who violates subsection (5) [~~shall be~~]:

6 (a) For the first offense, shall:

7 (i) Be fined [~~\$10 for the first offense. Any~~] \$100;

8 (ii) Complete a tobacco education program or a tobacco
9 use cessation program approved by the director of
10 health; or

11 (iii) Perform three hours of community service during
12 hours when the person is not employed and is not
13 attending school; and

14 (b) For any subsequent offense, shall [~~subject the~~
15 violator to a fine of \$50,]:

16 (i) Be fined \$300, no part of which shall be
17 suspended[, or the person shall be required to
18 perform]; or

19 (ii) Perform not less than forty-eight hours nor more
20 than seventy-two hours of community service



1 during hours when the person is not employed and
 2 is not attending school[-];
 3 provided that if the person is under eighteen years of age, that
 4 person's parent or guardian shall be notified of the offense and
 5 given fifteen days to select which penalty shall be imposed on
 6 the person and if no selection is made within fifteen days, the
 7 court shall impose a fine pursuant to paragraph (a)(i) or
 8 (b)(i).

9 Any tobacco product or electronic smoking device, as those
 10 terms are defined in subsection (7), in the person's possession
 11 at the time of violation of subsection (5) shall be seized,
 12 summarily forfeited to the State, and destroyed by law
 13 enforcement following the conclusion of an administrative or
 14 judicial proceeding finding that a violation of subsection (5)
 15 has been committed. The procedures set forth in chapter 712A
 16 shall not apply to this subsection."

17 SECTION 6. This Act does not affect rights and duties that
 18 matured, penalties that were incurred, and proceedings that were
 19 begun before its effective date.

20 SECTION 7. Statutory material to be repealed is bracketed
 21 and stricken. New statutory material is underscored.



S.B. NO. 2538

1 SECTION 8. This Act shall take effect on July 1, 2020.

2

INTRODUCED BY: Rosely H. Baker

Clarena K. Wischke



S.B. NO. 2538

Report Title:

Flavored Tobacco Products; Electronic Smoking Devices; Sale; Ban; Department of Education; DOH

Description:

Bans the sale of flavored tobacco products. Prohibits mislabeling of e-liquid products containing nicotine. Establishes fines and penalties for violations. Requires the Department of Education to establish a safe harbor program by which persons under 21 years of age may dispose of electronic cigarettes in their possession. Authorizes public school teachers to confiscate electronic cigarettes. Increases fines for the purchase or possession of tobacco products and electronic smoking devices by persons under 21 years of age. Authorizes a court to impose, as a penalty on a person 18-21 years of age who is convicted of possession of a tobacco product or electronic smoking device, the requirement to complete a tobacco education program, complete a tobacco use cessation program, or perform community service instead of paying a fine. Requires a parent or guardian of a minor to select from among the penalties for a minor convicted of possession of a tobacco product or electronic smoking device.

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