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.

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 "because 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 Hawaiʻi's youth. Vaping in Hawaiʻi has reached epidemic levels. Between 2011 to 2015, the proportion of youth experimenting with ESDs 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 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
colorizing 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 have
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 candies popular with
children, such as Jolly Ranchers and Sour Patch Kids. The
current legislature additionally finds that young people are
disproportionately using flavored tobacco products, including
menthol. According to the 2010 study Smoking and Tobacco Use in
Hawaii, 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, Rhode Island, 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 Hawaii.

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, 2021, 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; or

(B) Mislable 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, 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.

"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 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, 2021.

INTRODUCED BY: [Signature]

BY REQUEST
Report Title:
Flavored Tobacco Products; Sale; Ban

Description:
Bans the sale of flavored tobacco products. Effective January 1, 2021.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.
DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO FLAVORED TOBACCO PRODUCTS.

PURPOSE: To prohibit the sale, offering for sale, furnishing, or distribution of any flavored tobacco products, including menthol tobacco products, within the State.

MEANS: Amend section section 712-1258, Hawaii Revised Statutes (HRS).

JUSTIFICATION: This measure responds to the increasing trend of youth vaping through the appeal of flavored electronic smoking devices (ESDs) that feature flavored tobacco products, including menthol, and is a gateway to cigarettes and other substances.

Impact on the public: This measure will protect youth through prohibiting the sales or distribution of all flavored tobacco products. Most ESDs contain nicotine which is addictive, and youth who regularly use ESDs are more likely to use THCs and other substances. Youth ESD users are 4 times more likely to become regular cigarette users, and menthol is popular with younger smokers. This measure will not prohibit adults smokers from obtaining non-flavored tobacco products.

Impact on the department and other agencies: This proposal will make enforcement simpler because of the additional specificity; flavor restrictions will create parity between cigarettes and ESDs.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HTH-590.

OTHER AFFECTED AGENCIES: Department of the Attorney General; County Law Enforcement Agencies; Department of Taxation.

EFFECTIVE DATE: January 1, 2021