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## 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. Given



1 the apparent association between electronic smoking devices and  
2 lung injury, the legislature believes that the use of such  
3 devices is especially dangerous during times of widespread  
4 respiratory illness, such as the current coronavirus disease  
5 2019 (COVID-19) pandemic.

6 The legislature further finds that a significant driver to  
7 increased youth use of electronic smoking devices is the  
8 availability of flavored tobacco products. While a 2009 federal  
9 law, the Family Smoking Prevention and Tobacco Control Act,  
10 prohibited characterizing flavors, including fruit and candy  
11 flavorings, in cigarettes, it did not ban the use of  
12 characterizing flavors in other tobacco products, such as  
13 electronic smoking devices. The tobacco industry and electronic  
14 smoking device industry have in recent years significantly  
15 increased the introduction and marketing of flavored non-  
16 cigarette tobacco products for electronic smoking devices.

17 Adding flavoring to tobacco changes the taste and reduces  
18 the harshness of the otherwise unflavored tobacco product,  
19 making smoking more appealing and easier for beginners to try-  
20 and ultimately become addicted. According to a recent survey,  
21 eighty-one per cent of youth who have ever used a tobacco



1 product reported that the first tobacco product they used was  
2 flavored.

3       It is no coincidence that the number of electronic  
4 cigarette flavors has skyrocketed in recent years, with more  
5 than fifteen thousand unique electronic cigarette flavors  
6 identified in a 2018 study. Hawaii has experienced the  
7 heightened promotion of electronic cigarette products that offer  
8 flavors designed to appeal to the State's youth, such as candy,  
9 fruit, chocolate, mint, Kona coffee, Maui mango, shaka  
10 strawberry, and Molokai hot bread. Additionally, many of the  
11 packages are designed to resemble popular candies, such as Jolly  
12 Ranchers and Sour Patch Kids. The legislature additionally  
13 finds that young people are disproportionately using flavored  
14 tobacco products, including menthol. In Hawaii, seventy-eight  
15 per cent of Native Hawaiians and Pacific Islanders and forty-two  
16 per cent of Caucasian adult smokers consume menthol cigarettes.  
17 Menthol cigarette use is high among Filipinos as well. Current  
18 estimates predict that menthol cigarette smoking will contribute  
19 to more than three hundred thousand deaths by 2050.

20       Given the significant threat to public health posed by  
21 flavored tobacco products, including menthol, twenty-six local



1 jurisdictions in four states--California, Colorado,  
2 Massachusetts, and Minnesota--have enacted legislation to  
3 prohibit the sale of flavored tobacco products, including  
4 menthol. The legislature concludes that Hawaii should also take  
5 steps to regulate flavored tobacco products to reduce tobacco-  
6 related health disparities and address the youth vaping  
7 epidemic.

8 Accordingly, the purpose of this Act is to prohibit the  
9 sale or distribution of all flavored tobacco products in the  
10 State. This Act shall be known and may be cited as the  
11 Reversing the Youth Tobacco Epidemic Act of 2021.

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

15 "§712- \_\_\_\_\_ Sale or advertising of tobacco products; remote  
16 retail sales; flavored; nicotine-free. (1) Beginning January  
17 1, 2021, it shall be unlawful for any retailer or any agents or  
18 employees of the retailer to:

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



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

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

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

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



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

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

18       (6) For the purposes of this section:  
19       "Distinguishable" means perceivable by either the sense of  
20 smell or taste.



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

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

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

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





1 wintergreen, chocolate, cocoa, vanilla, honey, or any candy,  
2 dessert, alcoholic beverage, herb, or spice.

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

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

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

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

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

19 SECTION 3. Section 712-1258, Hawaii Revised Statutes, is  
20 amended by amending subsection (7) to read as follows:

21 "(7) For the purposes of this section:



1 "Electronic smoking device" means any electronic product  
2 that can be used to aerosolize and deliver nicotine or other  
3 substances to the person inhaling from the device, including but  
4 not limited to an electronic cigarette, electronic cigar,  
5 electronic cigarillo, [øæ] electronic pipe, or heated tobacco  
6 product, and any cartridge or other component of the device or  
7 related product.

8 "Heated tobacco product" means a product containing tobacco  
9 that produces an inhalable aerosol by:

- 10 (1) Heating the tobacco by means of an electronic device  
11 without combustion of the tobacco; or  
12 (2) Heat generated from a combustion source that only or  
13 primarily heats rather than burns the tobacco.

14 "Tobacco product" means any product made or derived from  
15 tobacco that contains nicotine or other substances and is  
16 intended for human consumption or is likely to be consumed,  
17 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or  
18 ingested by other means. "Tobacco product" includes but is not  
19 limited to a cigarette, cigar, pipe tobacco, chewing tobacco,  
20 snuff, snus, heated tobacco product, or an electronic smoking  
21 device. "Tobacco product" does not include drugs, devices, or



1 combination products approved for sale by the United States Food  
2 and Drug Administration, as those terms are defined in the  
3 Federal Food, Drug, and Cosmetic Act."

4 SECTION 4. This Act does not affect rights and duties that  
5 matured, penalties that were incurred, and proceedings that were  
6 begun before its effective date.

7 SECTION 5. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect on July 1, 2021.

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INTRODUCED BY:

A handwritten signature in black ink, appearing to be 'A. J. ...', written over a horizontal line.

JAN 27 2021



# H.B. NO. 1327

**Report Title:**

Flavored Tobacco Products; Electronic Smoking Devices; Sale;  
Ban; Department of Health

**Description:**

Bans the sale of flavored tobacco products. Prohibits  
mislabeling of e-liquid products containing nicotine.  
Establishes fines and penalties for violations. Includes heated  
tobacco products among the electronic smoking devices that are  
subject to restrictions under law.

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

