
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 health care 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 in Hawaii,
4 Maui, and Kauai counties. These rates are higher than the
5 national average, demonstrate a disturbing trend of youth
6 nicotine use, and threaten to undermine the historic decline in
7 combustible cigarette use.

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. In 2019, following more
18 than one thousand reported cases of lung injury and eighteen
19 confirmed deaths associated with the use of electronic cigarette
20 or "vaping" products nationwide, the department of health issued
21 a health advisory urging everyone to stop vaping. Given the



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

6 The legislature also 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 Hawaiian and Pacific Islander adult smokers
16 and forty-two per cent of Caucasian adult smokers consume
17 menthol cigarettes. Menthol cigarette use is high among
18 Filipinos as well. Current estimates predict that menthol
19 cigarette smoking will contribute to more than three hundred
20 thousand deaths by 2050.



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1 Given the significant threat to public health posed by
2 flavored tobacco products, including menthol, twenty-six local
3 jurisdictions in four states--California, Colorado,
4 Massachusetts, and Minnesota--have enacted legislation to
5 prohibit the sale of flavored tobacco products, including
6 menthol. The legislature concludes that Hawaii should also take
7 steps to regulate flavored tobacco and synthetic nicotine
8 products to reduce tobacco- and smoking-related health
9 disparities and address the youth vaping epidemic.

10 Accordingly, the purpose of this Act is to prohibit the
11 sale or distribution of all flavored tobacco and synthetic
12 nicotine products in the State.

13 This Act shall be known and may be cited as the Reversing
14 the Youth Vaping Epidemic Act of 2022.

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

18 "§712- Sale or advertising of flavored tobacco and
19 synthetic nicotine products; retail sales; e-liquid products.

20 (1) Beginning January 1, 2023, it shall be unlawful for any
21 retailer or any agent or employee 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 or
3 synthetic nicotine product;
- 4 (b) Mislabeled as nicotine-free, or sell or market for sale
5 as nicotine-free, any e-liquid product that contains
6 nicotine; or
- 7 (c) Market, advertise, or promote any electronic smoking
8 device in a manner that is designed to appeal to an
9 individual under twenty-one years of age.
- 10 (2) A statement or claim directed to consumers or the
11 public that the tobacco product or synthetic nicotine product is
12 flavored, including text, color, or images on the tobacco
13 product's or synthetic nicotine product's labeling or packaging
14 that is used to explicitly or implicitly communicate that the
15 tobacco product or synthetic nicotine product has a flavor other
16 than tobacco made by a retailer or manufacturer or an agent or
17 employee of the retailer or manufacturer in the course of the
18 person's agency or employment, is prima facie evidence that the
19 tobacco product or synthetic nicotine product is a flavored
20 tobacco or synthetic nicotine product.



1 (3) Any flavored tobacco or synthetic nicotine product
2 found in the retailer's possession that is in violation of this
3 section shall be considered contraband, promptly seized, and
4 subject to immediate forfeiture and destruction and shall not be
5 subject to the procedures set forth in chapter 712A.

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

18 (5) Notwithstanding any other law to the contrary, any
19 county may adopt a rule or ordinance that places greater
20 restrictions on the access to flavored tobacco or synthetic
21 nicotine products than provided for in this section. In the



1 case of a conflict between this section and any county rule or
2 ordinance regarding access to flavored tobacco or synthetic
3 nicotine products, the more stringent restrictions shall
4 prevail.

5 (6) For the purposes of this section:

6 "Distinguishable" means perceivable by either the sense of
7 smell or taste.

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

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

18 "Entity" means one or more individuals, a company,
19 corporation, a partnership, an association, or any other type of
20 legal entity.



1 "Flavored tobacco or synthetic nicotine product" means any
2 tobacco product or synthetic nicotine product that contains a
3 taste or smell, other than the taste or smell of tobacco, that
4 is distinguishable by a consumer either prior to or during the
5 consumption of a tobacco product or synthetic nicotine product,
6 including but not limited to any mentholated tobacco product or
7 a product that contains a taste or smell relating to fruit,
8 mint, menthol, wintergreen, chocolate, cocoa, vanilla, honey, or
9 any candy, dessert, alcoholic beverage, herb, or spice.

10 "Labeling" means written, printed, pictorial, or graphic
11 matter upon a tobacco product or synthetic nicotine product or
12 any of its packaging.

13 "Packaging" means a pack, box, carton, or container of any
14 kind, or if no other container, any wrapping, including
15 cellophane, in which a tobacco product or synthetic nicotine
16 product is sold or offered for sale to a consumer.

17 "Retailer" means an entity that sells, offers for sale, or
18 exchanges or offers to exchange for any form of consideration
19 tobacco products or synthetic nicotine products or e-liquids to
20 consumers. "Retailer" includes the owner of a tobacco retail
21 location.



1 "Synthetic nicotine product" has the same meaning as
2 defined in section 712-1258(7).

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

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

9 SECTION 3. Section 712-1258, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§712-1258 Tobacco products, synthetic nicotine products,**
12 **and electronic smoking devices; persons under twenty-one years**
13 **of age.** (1) It shall be unlawful to sell or furnish a tobacco
14 product or synthetic nicotine product in any shape or form or an
15 electronic smoking device to a person under twenty-one years of
16 age.

17 (2) All persons engaged in the retail sale of tobacco
18 products, synthetic nicotine products, or electronic smoking
19 devices shall check the identification of tobacco product,
20 synthetic nicotine product, or electronic smoking device
21 purchasers to establish the age of the purchaser if the



1 purchaser reasonably appears to be under twenty-seven years of
2 age.

3 (3) It shall be an affirmative defense that the seller of
4 a tobacco product, synthetic nicotine product, or an electronic
5 smoking device to a person under twenty-one years of age in
6 violation of this section had requested, examined, and
7 reasonably relied upon a photographic identification from the
8 person establishing that person's age as at least twenty-one
9 years of age prior to selling the person a tobacco product,
10 synthetic nicotine product, or an electronic smoking device.
11 The failure of a seller to request and examine photographic
12 identification from a person under twenty-one years of age prior
13 to the sale of a tobacco product, synthetic nicotine product, or
14 an electronic smoking device to the person shall be construed
15 against the seller and form a conclusive basis for the seller's
16 violation of this section.

17 (4) Signs using the statement, "The sale of tobacco
18 products, synthetic nicotine products, or electronic smoking
19 devices to persons under twenty-one is prohibited", shall be
20 posted on or near any vending machine in letters at least one-
21 half inch high and at or near the point of sale of any other



1 location where tobacco products, synthetic nicotine products, or
2 electronic smoking devices are sold in letters at least one-half
3 inch high.

4 (5) It shall be unlawful for a person under twenty-one
5 years of age to purchase or possess any tobacco product,
6 synthetic nicotine product, or electronic smoking device, as
7 those terms are defined in subsection (7). This provision does
8 not apply if a person under the age of twenty-one, with parental
9 authorization, is participating in a controlled purchase as part
10 of a law enforcement activity or a study authorized by the
11 department of health under the supervision of law enforcement to
12 determine the level of incidence of tobacco product, synthetic
13 nicotine product, or electronic smoking [~~devices~~] device sales
14 to persons under twenty-one years of age.

15 (6) Any person who violates subsection (1) or (4), or
16 both, shall be fined \$500 for the first offense. Any subsequent
17 offenses shall subject the person to a fine not less than \$500
18 nor more than \$2,000. Any person under twenty-one years of age
19 who violates subsection (5) shall be fined \$10 for the first
20 offense. Any subsequent offense shall subject the violator to a
21 fine of \$50, no part of which shall be suspended, or the person



1 shall be required to perform not less than forty-eight hours nor
2 more than seventy-two hours of community service during hours
3 when the person is not employed and is not attending school.
4 Any tobacco product, synthetic nicotine product, or electronic
5 smoking device, as those terms are defined in subsection (7), in
6 the person's possession at the time of violation of subsection
7 (5) shall be seized, summarily forfeited to the State, and
8 destroyed by law enforcement following the conclusion of an
9 administrative or judicial proceeding finding that a violation
10 of subsection (5) has been committed. The procedures set forth
11 in chapter 712A shall not apply to this subsection.

12 (7) For the purposes of this section:

13 "Electronic smoking device" means any electronic product
14 that can be used to aerosolize and deliver nicotine or other
15 substances to the person inhaling from the device, including but
16 not limited to an electronic cigarette, electronic cigar,
17 electronic cigarillo, ~~[e]~~ electronic pipe, or heated smoking
18 product, and any cartridge or other component of the device or
19 related product.

20 "Heated smoking product" means a product that produces an
21 inhalable aerosol by:



1 (1) Heating the tobacco, nicotine, or other substance by
2 means of an electronic smoking device without
3 combustion of the tobacco, nicotine, or other
4 substance; or

5 (2) Heat generated from a combustion source that only or
6 primarily heats rather than burns the tobacco,
7 nicotine, or other substance.

8 "Synthetic nicotine product" means any product not derived
9 from the tobacco plant that contains nicotine or other
10 substances and is intended for human consumption or is likely to
11 be consumed, whether smoked, heated, chewed, absorbed,
12 dissolved, inhaled, or ingested by other means. "Synthetic
13 nicotine product" includes but is not limited to a cigarette,
14 cigar, snuff, or snus not derived from or containing any tobacco
15 leaf; a heated smoking product; or an electronic smoking device.

16 "Synthetic nicotine product" does not include prescription drugs
17 or drugs, devices, or combination products approved for sale by
18 the United States Food and Drug Administration, as those terms
19 are defined in the Federal Food, Drug, and Cosmetic Act.

20 "Tobacco product" means any product made or derived from
21 tobacco that contains nicotine or other substances and is



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1 intended for human consumption or is likely to be consumed,
2 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or
3 ingested by other means. "Tobacco product" includes but is not
4 limited to a cigarette, cigar, pipe tobacco, chewing tobacco,
5 snuff, snus, heated smoking product, or an electronic smoking
6 device. "Tobacco product" does not include drugs, devices, or
7 combination products approved for sale by the United States Food
8 and Drug Administration, as those terms are defined in the
9 Federal Food, Drug, and Cosmetic Act."

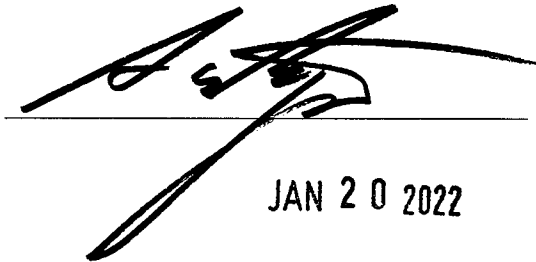
10 SECTION 4. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun before its effective date.

13 SECTION 5. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect on July 1, 2022.

16

INTRODUCED BY:



JAN 20 2022



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Report Title:

Flavored Tobacco Products; Synthetic Nicotine Products;
Electronic Smoking Devices; Heated Smoking Products; Retail
Sale; Advertising; Labeling; Ban; Penalties

Description:

Beginning 1/1/2023, bans the sale of flavored tobacco and synthetic nicotine products; prohibits mislabeling of e-liquid products containing nicotine; and prohibits the marketing, advertising, or promoting of electronic smoking devices to appeal to individuals under twenty-one. Establishes fines and penalties for violations. Includes heated smoking products among the electronic smoking devices that are subject to restrictions under law.

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