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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 in terms of the human suffering and loss of life it  
5 causes, as well as the financial burden it imposes on society  
6 and our health care system. According to the Centers for  
7 Disease Control and Prevention's 2014 "Best Practices for  
8 Comprehensive Tobacco Control Programs" guide, \$526,000,000 in  
9 health care costs are directly attributable to smoking in the  
10 State of Hawaii.

11           Furthermore, in a 2016 report titled "E-Cigarette Use Among  
12 Youth and Young Adults," the United States Surgeon General  
13 explained that ninety-five per cent of all smokers start smoking  
14 before the age of twenty-one. A 2017 study published in the  
15 American Journal of Preventive Medicine found that eighty-one  
16 per cent of youth who had previously used a tobacco product  
17 reported that the first product they used was flavored.



1 Flavored tobacco products promote youth initiation to tobacco  
2 use and push young occasional smokers to become daily smokers by  
3 reducing or masking the natural harshness and taste of tobacco  
4 smoke, thereby increasing the appeal of tobacco products.

5 Menthol is used by the tobacco industry because it has a  
6 cooling and numbing effect and can reduce the throat irritation  
7 caused by smoking, thus making menthol cigarettes an appealing  
8 option for youth who are initiating tobacco use. Candy and  
9 fruit flavors also improve the taste and reduce the harshness of  
10 tobacco products, making them more appealing and easier for  
11 beginners to try tobacco products and ultimately become  
12 addicted.

13 The legislature further finds that the popularity of  
14 electronic cigarettes among youth is concerning. The  
15 combination of enticing flavors and nicotine salts allows higher  
16 levels of nicotine to be inhaled with less irritation because  
17 they have a lower potential of hydrogen, also known as "pH". In  
18 the 2016 report titled "E-Cigarette Use Among Youth and Young  
19 Adults," the United States Surgeon General stated that,  
20 "Compared with older adults, the brain of the youth and young  
21 adults is more vulnerable to the negative consequences of



1 nicotine exposure. The effects include addiction, priming for  
2 use of other addictive substances, reduced impulse control,  
3 deficits in attention and cognition, and mood disorders."

4 While there has been a significant decline in the use of  
5 combustible cigarettes over the last decade, there has been a  
6 dramatic increase in the use of electronic smoking devices by  
7 Hawaii's youth. Vaping in Hawaii is at an epidemic level.  
8 According to the 2011 and 2015 Hawaii Youth Tobacco Survey,  
9 during these four years, the proportion of youth experimenting  
10 with electronic smoking devices increased six-fold among middle  
11 school youth and four-fold among high school youth. According  
12 to the 2019 Hawaii Youth Risk Behavior Survey, thirty-one per  
13 cent of middle school students and forty-eight per cent of  
14 public high school students had tried electronic smoking  
15 devices. The 2019 Hawaii Youth Risk Behavior Survey also  
16 indicates that eighteen per cent of middle school students and  
17 thirty-one per cent of high school students currently vape. The  
18 2019 Hawaii Youth Risk Behavior Survey also shows the rates are  
19 higher in the neighbor island counties with high school vaping  
20 use rates exceeding thirty-five per cent for Hawaii, Maui, and  
21 Kauai. These rates rank among the highest in the country.



1           Furthermore, while the 2009 Family Smoking Prevention and  
2 Tobacco Control Act, P.L. 111-31, prohibited characterizing  
3 flavors in cigarettes (including fruit and candy flavorings), it  
4 did not ban menthol in cigarettes or the use of characterizing  
5 flavors in other tobacco products. The Tobacco Control Act  
6 provided the United States Food and Drug Administration with the  
7 authority to regulate cigarettes, roll-your-own tobacco, and  
8 smokeless tobacco, but required the Food and Drug Administration  
9 to undertake an extensive rulemaking process to extend its  
10 regulatory authority to include e-cigarettes. Delays in the  
11 regulatory process allowed the tobacco industry and electronic  
12 smoking device industry to significantly increase the  
13 introduction of and extensively market flavored non-cigarette  
14 tobacco products, especially in electronic smoking devices.

15           It is no coincidence that the number of electronic  
16 cigarette flavors have skyrocketed in recent years. In a 2018  
17 study published in The Journal of Medical Internet Research, the  
18 count of flavor labels was reported to have more than doubled  
19 from 7,776 in 2013-2014 to 15,586 in 2016-2017. Hawaii has  
20 experienced the heightened promotion of vape products that offer  
21 candy and local flavors designed to appeal to the State's youth,



1 such as orange soda, apple mui, Kona coffee, Maui mango, shaka  
2 strawberry, lychee ice, and Molokai hot bread. Additionally,  
3 many of the packages are designed to look like candies popular  
4 with children, such as Jolly Ranchers and Sour Patch Kids.

5 The legislature additionally finds that young people are  
6 disproportionately using flavored tobacco products, including  
7 menthol. According to a 2010 Hawaii State Department of Health  
8 report titled "Smoking and Tobacco Use in Hawaii: Facts,  
9 Figures and Trends," seventy-eight per cent of native Hawaiian  
10 and Pacific Islander adult smokers and forty-two per cent of  
11 Caucasian adult smokers consume menthol cigarettes. A 2019  
12 study published in the Hawai'i Journal of Health and Social  
13 Welfare found that sixty-seven per cent of Filipino adult  
14 smokers preferred the menthol flavor. In a 2011 modeling study  
15 published in the American Journal of Public Health, an estimated  
16 633,252 deaths, nationally, can be averted by the year 2050 if  
17 menthol cigarette smoking is banned.

18 Given the significant threat to public health posed by  
19 flavored tobacco products, including those with menthol, five  
20 states (including California, Massachusetts, New Jersey, New  
21 York, and Rhode Island) and dozens of cities have enacted laws



1 prohibiting the sale of flavored tobacco products. These laws  
2 now protect over twenty-five per cent of the United States  
3 population. The legislature therefore finds that Hawaii should  
4 also take steps to regulate these products to reduce tobacco-  
5 related health disparities and address the youth vaping  
6 epidemic.

7 Accordingly, the purpose of this Act is to prohibit the  
8 sale or distribution in Hawaii of all flavored tobacco products,  
9 including products with menthol, and prohibit the mislabeling of  
10 products as nicotine-free.

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

14 "§712- Sale of flavored tobacco products; mislabeling as  
15 nicotine-free. (1) Beginning January 1, 2023, it shall be  
16 unlawful for any retailer, or any agent or employee of the  
17 retailer, to:

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



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

4        (2) A statement or claim, including but not limited to  
5        text, color, or images on the tobacco product's labeling or  
6        packaging that is used to explicitly or implicitly communicate  
7        that the tobacco product has a flavor other than tobacco, made  
8        by a manufacturer or an agent or employee of the manufacturer in  
9        the course of the person's agency or employment, and directed to  
10       consumers or the public, shall be prima facie evidence that the  
11       tobacco product is a flavored tobacco product.

12       (3) A tobacco product shall not be determined to have a  
13       characterizing flavor solely because of the use of additives or  
14       flavorings or the provision of ingredient information in the  
15       absence of a distinguishable taste or aroma, or both.

16       (4) Any flavored tobacco product found in a 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 or disposal, and shall not be subject  
20       to the procedures set forth in chapter 712A; provided that the  
21       cost of proper disposal of electronic smoking devices and



1 e-liquids as hazardous waste under section 11-266.1, Hawaii  
2 Administrative Rules, shall be borne by the retailer.

3 (5) Any retailer and any agent or employee of a retailer  
4 who violates this section shall be subject to a fine not to  
5 exceed \$500. Any subsequent violation shall subject the  
6 offender to a fine of not less than \$500 nor more than \$2,000.

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

14 (7) For the purposes of this section:

15 "Characterizing flavor" means a distinguishable taste or  
16 aroma, or both, other than the taste or aroma of tobacco,  
17 imparted by a tobacco product or any byproduct produced by the  
18 tobacco product. Characterizing flavors include but are not  
19 limited to tastes or aromas relating to any candy, chocolate,  
20 vanilla, honey, fruit, cocoa, coffee, dessert, alcoholic  
21 beverage, menthol, mint, wintergreen, herb, or spice.





1       "Cigarette" means any roll for smoking made wholly or in  
2 part of tobacco, irrespective of size and shape and whether or  
3 not the tobacco is flavored, adulterated, or mixed with any  
4 other ingredient, the wrapper or cover of which is made of paper  
5 or any other substance or material except tobacco.

6       "Constituent" means any ingredient, substance, chemical, or  
7 compound, other than tobacco, water, or reconstituted tobacco  
8 sheet, that is added by the manufacturer to a tobacco product  
9 during the processing, manufacture, or packing of the tobacco  
10 product.

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

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

19       "E-liquid" means any liquid or like substance, which may or  
20 may not contain nicotine, that is designed or intended to be  
21 used in an electronic smoking device, whether or not packaged in



1 a cartridge or other container. "E-liquid" shall not include  
2 prescription drugs; medical cannabis or manufactured cannabis  
3 products pursuant to chapter 329D; or medical devices used to  
4 aerosolize, inhale, or ingest prescription drugs, or  
5 manufactured cannabis products manufactured or distributed in  
6 accordance with section 329D-10(a).

7 "Entity" means one or more individuals, a limited liability  
8 company, corporation, a partnership, an association, or any  
9 other type of business.

10 "Flavored tobacco product" means any tobacco product that  
11 contains a constituent that imparts a characterizing flavor, but  
12 does not include any product that has received a marketing order  
13 or other authorization the United States Food and Drug  
14 Administration pursuant to title 21 United States Code section  
15 387j.

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

18 "Packaging" means a pack, box, carton, or container of any  
19 kind, or if no other container, any wrapping, including  
20 cellophane, in which a tobacco product is sold or offered for  
21 sale to a consumer.



1       "Retailer" means an entity who sells, offers for sale, or  
2 exchanges or offers to exchange tobacco products to consumers  
3 for any form of consideration. The term "retailer" includes the  
4 owner of a tobacco retail location.

5       "Tobacco product" means any product containing, made of, or  
6 derived from tobacco or nicotine that is intended for human  
7 consumption or is likely to be consumed, whether smoked, heated,  
8 chewed, absorbed, dissolved, inhaled, or ingested by other  
9 means. "Tobacco product" includes but is not limited to a  
10 cigarette, cigar, pipe tobacco, chewing or smokeless tobacco,  
11 snuff, snus, e-liquid, or an electronic smoking device.

12 "Tobacco product" does not include drugs, devices, or  
13 combination products approved for sale by the United States Food  
14 and Drug Administration, as those terms are defined in the  
15 Federal Food, Drug, and Cosmetic Act.

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."



1 SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 4. If any provision of this Act, or the  
5 application thereof to any person or circumstance, is held  
6 invalid, the invalidity does not affect other provisions or  
7 applications of the Act that can be given effect without the  
8 invalid provision or application, and to this end the provisions  
9 of this Act are severable.

10 SECTION 5. New statutory material is underscored.

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



**Report Title:**

Flavored Tobacco Products; Sale; Ban

**Description:**

Bans the sale of flavored tobacco products and mislabeled e-liquid products. Establishes fines. (SD2)

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

