

JAN 19 2024

A BILL FOR AN ACT

RELATING TO TOBACCO PRODUCTS.

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 Hawaii. Tobacco use is a serious public health
4 problem that results in human suffering and loss of life and
5 causes financial burdens on society and the health care system.
6 Every year in the State, \$526,000,000 in health care costs are
7 directly attributed to smoking, while \$142,000,000 in medicaid
8 costs are related to smoking.

9 The legislature notes that ninety-five per cent of all
10 smokers start before the age of twenty-one. Eighty-one per cent
11 of youth who have ever used a tobacco product report that the
12 first tobacco product they used was flavored. Flavored tobacco
13 products, such those with candy or fruit flavors, promote youth
14 initiation of tobacco use and help young occasional smokers
15 become daily smokers by reducing or masking the natural
16 harshness and taste of tobacco smoke, thereby increasing the
17 appeal of tobacco products.



1 Menthol, in particular, is a major driver of initiation and
2 addiction. It is used by the tobacco industry because it has a
3 cooling and numbing effect and can reduce the throat irritation
4 from smoking, thus making menthol tobacco an appealing option
5 for new users or young people and aids the transition to regular
6 use. Essentially, menthol flavoring makes it easier to start
7 smoking and harder to quit. The United States Centers for
8 Disease Control and Prevention estimates that if menthol
9 cigarettes were no longer available, four thousand four hundred
10 additional adults in Hawaii would quit smoking.

11 Additionally, young people and people of color are
12 disproportionately using flavored tobacco products, including
13 menthol. The 2023 National Youth Tobacco Survey found that over
14 eighty-nine per cent of e-cigarette users report using flavored
15 products, with fruit, sweet flavors like candy or desserts,
16 mint, and menthol reported as the most popular flavors.
17 According to the 2021 Behavioral Risk Factor Surveillance
18 System, eighty-seven per cent of Native Hawaiian and eight-four
19 per cent of Filipino adult smokers in Hawaii consume menthol
20 cigarettes, compared to forty-four per cent of Caucasian adult
21 smokers.



1 The legislature also finds that the widespread use of
2 electronic smoking devices among youth is concerning. While
3 there has been a significant decline in the use of combustible
4 cigarettes over the last decade, there has been a dramatic
5 increase in the use of electronic smoking devices by Hawaii's
6 youth. Vaping in Hawaii is at an epidemic level. Between 2011
7 to 2015, the proportion of youth experimenting with electronic
8 smoking devices increased six-fold among middle school youth and
9 four-fold among high school youth. The latest estimates show
10 that individual counties in Hawaii report current electronic
11 smoking device use as high as twenty to thirty per cent among
12 high school students and twelve to seventeen per cent among
13 middle school students.

14 Use of electronic smoking devices has adverse physical and
15 mental health impacts with potential lifelong consequences. The
16 United States Surgeon General noted in the 2016 report titled
17 "E-Cigarette Use Among Youth and Youth Adults" that "[b]ecause
18 the adolescent brain is still developing, nicotine use during
19 adolescence can disrupt the formation of brain circuits that
20 control attention, learning, and susceptibility to addiction."
21 According to the American Heart Association, long-term use of



1 electronic smoking devices can impair blood vessel function and
2 increase risk for cardiovascular disease as well as increase
3 depression and anxiety. Finally, electronic smoking devices
4 produce acetaldehyde, acrolein, and formaldehyde, all of which
5 can cause lung disease.

6 The legislature notes that in 2009, a federal law, the
7 Family Smoking Prevention and Tobacco Control Act, prohibited
8 characterizing flavors, including fruit and candy flavorings, in
9 cigarettes but did not ban menthol in cigarettes or the use of
10 characterizing flavors in other tobacco products. Only
11 cigarettes, roll-your-own tobacco, and smokeless tobacco are
12 subject to regulation under the Act. The tobacco industry and
13 electronic smoking device industry have since significantly
14 increased the introduction and marketing of flavored
15 non-cigarette tobacco products, especially electronic smoking
16 devices.

17 The legislature further finds that it is no coincidence
18 that the number of electronic cigarette flavors have skyrocketed
19 in recent years, with more than fifteen thousand five hundred
20 unique electronic cigarette flavors identified in a 2018 study.
21 To compound the problem, the latest flavored tobacco products



1 contain excessive levels of nicotine and use nicotine salts.
2 For example, one popular electronic cigarette product that
3 appeals to youth and young adults has the nicotine equivalent of
4 about five hundred ninety cigarettes. Hawaii has experienced
5 the heightened promotion of electronic smoking device products
6 that offer candy and local flavors designed to appeal to the
7 State's youth, such as candy, fruit, chocolate, mint, menthol,
8 Kona coffee, Maui mango, shaka strawberry, and Molokai hot
9 bread. Additionally, many of the packages are designed to look
10 like candies popular with children, such as Jolly Ranchers and
11 Sour Patch Kids.

12 Given the significant threat to public health posed by
13 flavored tobacco products, including those with menthol, five
14 states -- California, Massachusetts, New Jersey, New York, and
15 Rhode Island -- and hundreds of localities have enacted policies
16 to end the sale of flavored tobacco products. The legislature
17 concludes that Hawaii should also take steps to regulate
18 flavored tobacco products to reduce tobacco-related health
19 disparities and address the youth vaping epidemic.

20 Accordingly, the purpose of this Act is to:



- 1 (1) Prohibit the sale of flavored tobacco products,
2 including products with menthol, and mislabeled
3 e-liquid products that contain nicotine; and
- 4 (2) Repeal language making the sale of cigarettes, tobacco
5 products, and electronic smoking devices a statewide
6 concern and preempting county ordinances and
7 regulations.

8 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
9 amended by adding a new part to be appropriately designated and
10 to read as follows:

11 **"PART . SALE OF FLAVORED TOBACCO PRODUCTS AND MISLABELED**
12 **E-LIQUID PRODUCTS**

13 **§321- Definitions.** As used in this part, unless the
14 context otherwise requires:

15 "Cigarette" has the same meaning as in section 245-1.

16 "Department" means the department of health.

17 "Distinguishable" means the perceivable sense of smell,
18 taste, or feel.

19 "E-liquid" means any liquid or like substance, which may or
20 may not contain nicotine, that is designed or intended to be



1 used in an electronic smoking device, whether or not packaged in
2 a cartridge or other container. "E-liquid" does not include:

3 (1) Prescription drugs;

4 (2) Cannabis for medical use pursuant to chapter 329 or
5 manufactured cannabis products pursuant to chapter
6 329D; or

7 (3) Medical devices used to aerosolize, inhale, or ingest
8 prescription drugs, including manufactured cannabis
9 products described in section 329D-10.

10 "Electronic smoking device" means any device that may be
11 used to deliver any aerosolized or vaporized substance to a
12 person inhaling from the device, including but not limited to an
13 electronic cigarette, electronic cigar, electronic pipe, vape
14 pen, or electronic hookah. "Electronic smoking device" does not
15 include drugs, devices, or combination products authorized for
16 sale by the United States Food and Drug Administration and
17 subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
18 301 et seq.).

19 "Entity" has the same meaning as in section 245-1.

20 "Flavored tobacco product" means any tobacco product that
21 imparts:



- 1 (1) A taste or odor distinguishable by an ordinary
2 consumer, other than the taste or odor of tobacco,
3 either before or during the consumption of the tobacco
4 product, including but not limited to any tastes or
5 odors relating to fruit, chocolate, vanilla, honey,
6 candy, cocoa, dessert, alcoholic beverage, mint,
7 wintergreen, menthol, herb, or spice; or
8 (2) A cooling, tingling, or numbing sensation
9 distinguishable by an ordinary consumer during the
10 consumption of the tobacco product.

11 "Labeling" means written, printed, pictorial, or graphic
12 matter upon a tobacco product or 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 is sold or offered for
16 sale to a consumer.

17 "Retail tobacco location" means any premises where tobacco
18 products are sold or distributed to a consumer.

19 "Retailer" means an entity who sells, offers for sale, or
20 exchanges or offers to exchange tobacco products to consumers



1 for any form of consideration. "Retailer" includes an owner,
2 agent, or employee of a retail tobacco location.

3 "Tobacco product" means:

4 (1) Any product containing, made of, or derived from
5 tobacco or nicotine that is intended for human
6 consumption or is likely to be consumed, whether
7 inhaled, absorbed, or ingested by any other means,
8 including but not limited to a cigarette, a cigar,
9 pipe tobacco, chewing tobacco, snuff, or snus;

10 (2) Any electronic smoking device and any substances that
11 may be aerosolized or vaporized by the device,
12 including e-liquids, whether or not the substance
13 contains nicotine; or

14 (3) Any component, part, or accessory of any item
15 described in paragraph (1) or (2), whether or not any
16 of these contains tobacco or nicotine, including but
17 not limited to filters, rolling papers, blunt or hemp
18 wraps, hookahs, mouthpieces, and pipes.

19 "Tobacco product" does not mean drugs, devices, or combination
20 products authorized for sale by the United States Food and Drug



1 Administration, as those terms are defined in the Federal Food,
2 Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

3 **§321- Sale of flavored tobacco products; mislabeling as**
4 **nicotine-free; prohibited.** (a) Beginning January 1, 2025, it
5 shall be unlawful for any retailer to:

- 6 (1) Sell, offer for sale, or possess with the intent to
7 sell or offer for sale a flavored tobacco product; or
8 (2) Mislabel as nicotine-free, or sell or market for sale
9 as nicotine-free, any e-liquid product that contains
10 nicotine.

11 (b) A statement or claim, including but not limited to
12 text, color, or images on the tobacco product's labeling or
13 packaging, that is used to explicitly or implicitly communicate
14 that the tobacco product has a flavor other than tobacco, or
15 that the tobacco product imparts a cooling or numbing sensation,
16 made by a manufacturer or an agent or employee of the
17 manufacturer, and directed to consumers or the public shall be
18 prima facie evidence that the tobacco product is a flavored
19 tobacco product. This includes but is not limited to public
20 statements that a product has a minty or cooling effect, such as



1 describing the product as "chill", "ice", "fresh", "arctic", or
2 "frost".

3 (c) Any tobacco product found in a retailer's possession
4 that is in violation of this part shall be considered contraband
5 and may be seized by an inspector or subject to immediate
6 destruction or disposal in accordance with rules adopted by the
7 department. The cost of proper disposal of tobacco products as
8 hazardous waste pursuant to rules adopted by the department
9 shall be borne by the retailer.

10 (d) Any retailer who violates this part shall be subject
11 to a fine no less than \$100 nor more than \$1,000 for each
12 separate offense. Each day of each violation shall constitute a
13 separate offense. Any fines collected by the department shall
14 be deposited to the credit of the general fund.

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



1 SECTION 3. Section 328J-11.5, Hawaii Revised Statutes, is
2 repealed.

3 ~~["~~§328J-11.5~~ Statewide concern. (a) Sales of~~
4 ~~cigarettes, tobacco products, and electronic smoking devices are~~
5 ~~a statewide concern. It is the intent of the legislature to~~
6 ~~regulate the sale of cigarettes, tobacco products, and~~
7 ~~electronic smoking devices in a uniform and exclusive manner.~~

8 ~~(b) All local ordinances or regulations that regulate the~~
9 ~~sale of cigarettes, tobacco products, and electronic smoking~~
10 ~~devices are preempted, and existing local laws and regulations~~
11 ~~conflicting with this chapter are null and void.~~

12 ~~(c) Nothing in this chapter shall be construed to limit a~~
13 ~~county's authority under section 328J-15."]~~

14 SECTION 4. If any provision of this Act, or the
15 application thereof to any person or circumstance, is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

20 SECTION 5. Statutory material to be repealed is bracketed
21 and stricken.



1 SECTION 6. This Act shall take effect on January 1, 2025.

2

INTRODUCED BY: *Karl Rhoads*



S.B. NO. 2091

Report Title:

Flavored Tobacco Products; Mislabeled E-liquid Products; Sale; Prohibition

Description:

Prohibits the sale of flavored tobacco products and mislabeled e-liquid products that contain nicotine. Repeals language making the sale of cigarettes, tobacco products, and electronic smoking devices a statewide concern and preempting county ordinances and regulations. Effective 1/1/2025.

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