

JAN 20 2023

A BILL FOR AN ACT

RELATING TO HEALTH.

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. In Hawaii, tobacco use accounts for one thousand four
4 hundred annual deaths and \$526,000,000 in annual health care
5 costs directly attributed to smoking related diseases, according
6 to the Centers for Disease Control and Prevention's 2014 "Best
7 Practices for Comprehensive Tobacco Control Programs" guide.
8 Tobacco use is a serious public health problem in terms of the
9 human suffering and loss of life it causes, and is a financial
10 burden on society and our healthcare system.

11 The legislature further finds that eighty-one per cent of
12 youth who have ever used a tobacco product report that the first
13 tobacco product they used was flavored. Flavored tobacco
14 products promote youth initiation of tobacco use and help young
15 occasional smokers become daily smokers by reducing or masking
16 the natural harshness and taste of tobacco smoke, thereby
17 increasing the appeal of tobacco products.



1 The legislature additionally finds that menthol, in
2 particular, 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 cigarettes an appealing option
5 for youth who are initiating tobacco use. Candy and fruit
6 flavors improve the taste and reduce the harshness of tobacco
7 products, making them more appealing and easier for beginners to
8 try tobacco products and ultimately become addicted. The United
9 States Surgeon General noted in the 2016 report titled "E-
10 Cigarette Use Among Youth and Youth Adults" that "[b]ecause the
11 adolescent brain is still developing, nicotine use during
12 adolescence can disrupt the formation of brain circuits that
13 control attention, learning, and susceptibility to addiction."

14 Furthermore, delays in the United States Food and Drug
15 Administration regulatory process of e-cigarettes have allowed
16 the tobacco and electronic smoking device industries to
17 significantly increase the marketing and production of
18 electronic vaping devices. According to a 2018 study published
19 in the Journal of Medical Internet Research, the count of
20 flavored tobacco products went from 7,764 in 2014 to 15,586 in
21 2017, a one hundred per cent increase. Every year that passes



1 youth become more exposed to the predatory practices of tobacco
2 companies seeking a market for nicotine addiction. Hawaii has
3 experienced the heightened promotion of vape products that offer
4 candy and local flavors designed to appeal to the State's youth,
5 such as POG, apple mui, luau punch, rainbow candy, lava burst
6 ice, Shaka strawberry, lychee ice, Molokai Hot Bread, and
7 lilikoi lychee. Additionally, many of the packages are designed
8 to look like candies popular with children, such as Jolly
9 Ranchers and Sour Patch Kids.

10 The legislature also finds that young people and people of
11 color are disproportionately using flavored tobacco products,
12 including menthol. According to the 2019 Hawaii Youth Risk
13 Behavior Survey, an average of fifty-nine per cent of Hawaii's
14 high school cigarette smokers and thirty-eight per cent of
15 middle school cigarette smokers used menthol. According to the
16 2020 Behavioral Risk Factor Surveillance System, sixty-three per
17 cent of adult smokers in Hawaii usually smoke menthol
18 cigarettes.

19 Furthermore, the 2020 Behavioral Risk Factor Surveillance
20 System shows that prevalence is high among specific ethnic
21 groups with seventy-nine per cent of Filipinos, seventy-eight



1 per cent of Native Hawaiians, and sixty-nine per cent of
2 Japanese usually smoking menthol cigarettes. The 2021 National
3 Youth Tobacco Survey report, estimates that ending the sale of
4 flavored tobacco in Hawaii would save the State at least
5 \$48,000,000 in long-term health care costs, prevent seven
6 hundred premature smoking-related deaths, prompt over three
7 thousand menthol cigarette smokers to quit, and prevent youth
8 from initiating smoking with menthol cigarettes.

9 Given the significant threat to public health posed by
10 flavored tobacco products, including those with menthol, five
11 states—California, Massachusetts, New Jersey, New York, and
12 Rhode Island—and over three hundred sixty localities have
13 enacted policies to end the sale of flavored tobacco products to
14 some extent. These laws now protect over twenty-five per cent
15 of the United States' population. Hawaii must also take steps
16 to regulate these products to address the youth vaping epidemic
17 and reduce tobacco-related health disparities.

18 Accordingly, the purpose of this Act is to prohibit the
19 sale or distribution of all flavored tobacco products, including
20 products with menthol, and prohibit the mislabeling of products
21 as nicotine-free.



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

4 **"PART . SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED**

5 **§321-A Definitions.** As used in this part, unless the
6 context otherwise requires:

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

8 "Department" means the department of health.

9 "Director" means the director of health.

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

12 "Electronic smoking device" means any device that may be
13 used to deliver any aerosolized or vaporized substance to the
14 person inhaling from the device, including but not limited to an
15 electronic cigarette, electronic cigar, electronic pipe, vape
16 pen, or electronic hookah. "Electronic smoking device" includes
17 any component, part, or accessory of the device, and any
18 substance that may be aerosolized or vaporized by such device,
19 whether or not the substance contains nicotine. "Electronic
20 smoking device" does not include drugs, devices, or combination
21 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.

3 "E-liquid" means any liquid or like substance, which may or
4 may not contain nicotine, that is designed or intended to be
5 used in an electronic smoking device, whether or not packaged in
6 a cartridge or other container. "E-liquid" does not include
7 prescription drugs; cannabis for medical use pursuant to chapter
8 329 or manufactured cannabis products pursuant to chapter 329D;
9 or medical devices used to aerosolize, inhale, or ingest
10 prescription drugs, including manufactured cannabis products
11 manufactured or distributed in accordance with section 329D-
12 10(a).

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

14 "Flavored tobacco product" means any tobacco product that
15 contains a taste or smell, other than the taste or smell of
16 tobacco, that is distinguishable by an ordinary consumer either
17 prior to or during the consumption of a tobacco product,
18 including but not limited to any taste or smell relating to
19 fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla,
20 honey, molasses, or any candy, dessert, alcoholic beverage,
21 herb, or spice.



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

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

7 "Retailer" means an entity who sells, offers for sale, or
8 exchanges or offers to exchange tobacco products to consumers
9 for any form of consideration. "Retailer" includes an owner,
10 agent, or employee of a tobacco retail location.

11 "Tobacco product" means:

12 (1) Any product containing, made of, or derived from
13 tobacco or nicotine that is intended for human
14 consumption or is likely to be consumed, whether
15 inhaled, absorbed, or ingested by any other means,
16 including but not limited to a cigarette, a cigar,
17 pipe tobacco, chewing tobacco, snuff, or snus;

18 (2) Any electronic smoking device and any substances that
19 may be aerosolized or vaporized by such device,
20 whether or not the substance contains nicotine; or



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

6 "Tobacco product" does not mean drugs, devices, or combination
7 products authorized for sale by the United States Food and Drug
8 Administration, as those terms are defined in the Federal Food,
9 Drug, and Cosmetic Act.

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

14 **§321-B Sale of flavored tobacco products; mislabeling as**
15 **nicotine-free.** (a) Beginning January 1, 2024, it shall be
16 unlawful for any retailer to:

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

19 (2) Mislabel as nicotine-free, or sell or market for sale
20 as nicotine-free, any e-liquid product that contains
21 nicotine.



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

8 (c) Any flavored tobacco product found in a retailer's
9 possession that is in violation of this part may be considered
10 contraband, may be seized by an inspector, or may be subject to
11 immediate destruction or disposal by the retailer in accordance
12 with rules adopted by the department pursuant to section 321-D.
13 The cost of proper disposal of electronic smoking devices and e-
14 liquids as hazardous waste pursuant to the rules shall be borne
15 by the retailer.

16 (d) Any retailer who violates this part shall be subject
17 to a fine no less than \$100 nor more than \$1,000 for each
18 separate offense. Each day of each violation constitutes a
19 separate offense. Any fines collected by the department shall
20 be deposited to the credit of the general fund.



1 (e) Notwithstanding any other law to the contrary, any
2 county may adopt a rule or ordinance that places greater
3 restrictions on the access to flavored tobacco products than
4 provided in this part. In the case of a conflict between the
5 restrictions in this part and any county rule or ordinance
6 regarding access to flavored tobacco products, the more
7 stringent restrictions shall prevail.

8 **§321-C Inspectors; authority and access to records.** (a)
9 The director may appoint, commission, or contract for services
10 of a third party one or more inspectors as the exigencies of the
11 enforcement of this part may require. Persons appointed,
12 commissioned, or contracted for services under this part shall
13 have and may exercise all the powers and authority outlined in
14 the rules adopted pursuant to section 321-D.

15 (b) Information necessary to investigate violations of
16 this part shall be made available to the department and any
17 appointed, commissioned, or contracted inspectors of the
18 department.

19 **§321-D Administrative rules.** (a) The department may
20 adopt rules pursuant to chapter 91 to effectuate the purposes of
21 this part.



1 (b) No later than June 30, 2024, the department shall
2 adopt interim rules, which shall be exempt from chapters 91 and
3 201M, to effectuate the purposes of this part; provided that the
4 interim rules shall remain in effect until January 1, 2030, or
5 until rules are adopted pursuant to subsection (a), whichever
6 occurs sooner.

7 **§321-E Contract for services.** The department may contract
8 the services of a third party in accordance with chapter 103D
9 for enforcement, inspections, or any other services needed to
10 administer this part."

11 SECTION 3. There is established two full-time equivalent
12 (2.0 FTE) program specialist positions to review, process, and
13 initiate inspections under the authority of the department of
14 health and one full-time equivalent (1.0 FTE) hearings officer
15 position to preside over administrative hearings and other
16 related hearings duties as required under section 2 of this Act.

17 SECTION 4. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so
19 much thereof as may be necessary for fiscal year 2023-2024 and
20 the same sum or so much thereof as may be necessary for fiscal
21 year 2024-2025 for to carry out the purposes of this Act,



1 including the hiring of necessary staff, which includes the two
2 full-time equivalent (2.0 FTE) program specialist positions and
3 one full-time equivalent (1.0 FTE) hearings officer position.

4 The sums appropriated shall be expended by the department
5 of health for the purposes of this Act.

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

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

15 SECTION 7. In codifying the new sections added by section
16 2 of this Act, the revisor of statutes shall substitute
17 appropriate section numbers for the letters used in designating
18 the new sections in this Act.

19 SECTION 8. This Act shall take effect on January 1, 2024;
20 provided that section 4 shall take effect on July 1, 2023.

21



S.B. NO. 496

INTRODUCED BY: 



S.B. NO. 496

Report Title:

Prohibition; Sale; Flavored Tobacco Products; Appropriation

Description:

Prohibits the sale of flavored tobacco products and the mislabeling of e-liquids as nicotine free. Authorizes the department of health to appoint, commission, or contract for services of inspectors. Establishes two full-time equivalent program specialist position and one full-time equivalent hearing officer position. Appropriates funds. Effective 1/1/2024.

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